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## **Legislative Assembly of Ontario**

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## **Assemblée législative de l'Ontario**

Première session, 36<sup>e</sup> législature

# **Official Report of Debates (Hansard)**

**Wednesday 16 April 1997**

# **Journal des débats (Hansard)**

**Mercredi 16 avril 1997**

**Standing committee on  
resources development**

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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
RESOURCES DEVELOPMENT

Wednesday 16 April 1997

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU  
DÉVELOPPEMENT DES RESSOURCES

Mercredi 16 avril 1997

*The committee met at 1007 in room 228.*WATER AND SEWAGE SERVICES  
IMPROVEMENT ACT, 1997LOI DE 1997 SUR L'AMÉLIORATION  
DES SERVICES D'EAU ET D'ÉGOUT

Consideration of Bill 107, An Act to enact the Municipal Water and Sewage Transfer Act, 1997 and to amend other Acts with respect to water and sewage / Projet de loi 107, Loi visant à édicter la Loi de 1997 sur le transfert des installations d'eau et d'égout aux municipalités et modifiant d'autres lois en ce qui a trait à l'eau et aux eaux d'égout.

**The Chair (Ms Brenda Elliott):** Good morning, everyone. I'd like to welcome everyone to our third day of hearings on Bill 107, An Act to enact the Municipal Water and Sewage Transfer Act.

## JOHN SANDLOS

**The Chair:** Our first presenter this morning is Mr John Sandlos. Welcome. Your presentation time is 15 minutes. That includes your own presentation and time for questioning from the caucus.

**Mr John Sandlos:** Good morning. My name is John Sandlos. I'm a masters student in environmental studies at York University as well as a teaching assistant for the faculty's course in urban sustainability. I'm pleased to have a chance to address the committee today but must begin by expressing some reservations about the public hearings process surrounding this bill and other recent mega-week proposals.

I have attended many hours of hearings on Bills 103 and 104 and have witnessed many MPPs talking throughout the proceedings, mimicking the presenters and expressing a general contempt for any view that opposes the government's perspective. In one case, an MPP returned from a break during the Bill 104 hearings and asked her colleague, "Is this another teacher?" Is it any surprise, then, that none of the advice and recommendations put forward during the Bill 103 hearings have been heeded by the government? Still, I will try to offer constructive advice to this commission but perhaps should come clean and tell everyone that though I am not a teacher, I am just another one of those environmentalists.

I want to begin by telling you about a city, a fictional city but a city that has frightening implications for contemporary society none the less. It is a city that Bertolt Brecht imagined in his 1927 opera *The Rise and Fall of the City of Mahagonny*, a play that depicts the efforts of a group of disaffected urban dwellers to create

a new city in the sun. This city is meant to satisfy all the private desires and wealth of its citizens. The motto of the citizens is, in an eerie foreshadow of contemporary sloganeering, *Just Do It*. They support the idea of less government in their lives, and they are also, in their words, "for freedom of the rich, for valour against the defenceless, for greatness of squalor, for the immortality of underhandedness" and "for the continuation of the golden age." This golden age is Brecht's extreme parody of a society that bases its notion of the public good solely on the accumulation of private wealth.

I wonder what kind of water and sewage system they would have had in the city of Mahagonny? Brecht never says, but considering the fact that a man is executed near the end of the play for not paying his bar tab, it is perhaps safe to assume that water was a fairly scarce commodity in the city. Regardless, in the absence of any collective, non-privatized vision of the public good, Mahagonny descends into violence and anarchy near the end of the play. The citizens' dream of a wholly privatized golden age crumbles with the rest of the city.

Call me paranoid, but I'm starting to feel like things are beginning to crumble in my own city and in the province as a whole, which brings me to Bill 107. To put things in context, Bill 107 seems to be part of a larger exercise to offload so many public services from the province to the lowest levels of government that they will wither on the vine of ineffectiveness, and the government will never have to accept direct responsibility for the consequences in front of the electorate. In addition, it is a cynical attempt, in my opinion, to impose neo-conservative ideologies of reduced public services and expenditure cutbacks on municipal governments which may not share this perceptive on public policy formation. In the particular case of Bill 107, it is undoubtedly an attempt to offload expensive water and sewage systems on to municipalities, which can ill afford them, and thus force their privatization.

The government members of this committee yesterday denied this assertion and stated that the government is committed to public ownership of water and sewage facilities. But what is an already sceptical public supposed to think when committee members later argue the merits of privatization with various deputants at the same hearings; when previous government legislation has removed the rights of local citizens to a referendum concerning water privatization; when there are no guarantees against privatization in the bill; and when the Premier of the province himself appears on television, just last evening, to say that all options, including privatization, will be considered following the implementation of Bill 107?



I think the case against privatization has been stated clearly from case studies outlined by other deputants, so I'm not going to go into that expressly. I am disturbed that the government of Ontario is trying to impose this weak option on an ill-informed citizenry that has been given little time to prepare responses or consider the consequences. I must say I was up pretty late last night doing this because I only had three days to get it ready. What is more, the government deliberately seeks to confuse the citizenry by publicly stating conflicting views on the purposes of Bill 107. I believe these actions represent irresponsible and morally questionable behaviour.

However, it is behaviour that is not without precedent. For example, in Great Britain, Neil McFarlane, Margaret Thatcher's parliamentary undersecretary of state for the Department of the Environment, stated in the House of Commons session of December 20, 1984: "We have absolutely no intention of privatizing the water industry. The government have no plans to urge that on the water authorities. There has been some press speculation about it in the past but there is no intention to do so." Yet at the same time, according to the authors of the book I got this quote from, William Maloney and Jeremy Richardson, "the Conservative government had been encouraging the support for privatization from the management of all of its public corporations, through a process which Steel and Heald have pointed out made" — and this is a subquote — "life unnecessarily unpleasant for the nationalized industries [and] thus became a convenient spur in a change in attitudes towards denationalization."

Substitute the word "municipality" for "nationalized corporation" here, and I think we have a fairly accurate representation of what is occurring in Ontario at this very moment. History, it seems, does repeat itself.

In an even more bizarre analogy, we find the Baroness Nicol outlining what is today a major weakness of Bill 107 in Britain's House of Lords on April 22, 1985. She condemned the Department of the Environment for "this very limited consultation. Even in flying a kite, you need to fly it over a wide area. The views which should have been sought out should have included those of the local authorities, the Ministry of Agriculture, Fisheries and Food, conservation bodies and consumer organizations." Not all of those apply in Ontario, but you get the analogy. "Without their views any decision or further action on the lines of this document would be made on insufficient evidence."

Herein lies, I believe, the central failure of Bill 107, the failure to consult local people and local authorities on their needs and priorities for improving water quality and sewage treatment in their areas and communities. It is a shameful abdication of responsibility by the province rather than a provision for meaningful local control over water and sewage systems. There are many problems with water and sewage services in the province, including leakage and overflow of sewage ducts and mere primary treatment of water in many facilities. How this bill addresses these problems is not apparent to me or many of my fellow citizens. Thus, the bill should be amended so that it no longer exists. However, barring the above, I also recommend the following:

(1) The rights of local citizens to a broad consultation process and a referendum regarding water and sewage privatization should be restored and preserved.

(2) No downloading of water and sewage services presently controlled by the province should occur without the consent of the local municipality in question, and no privatization of water and sewage facilities should be allowed to occur due to the financial instability of any offloading arrangement. The province must make up for any funding gaps in any offloading of water and sewage management responsibilities to local municipalities.

(3) Section 11 of the bill, which prohibits citizens from questioning elected officials and civil servants in the courts, or presumably because the words say "any proceedings," I assume that means they can't question the Ontario Municipal Board, should be struck out as undemocratic and highly irregular. I am disturbed at the high numbers of similar sections that appear in other recent and notorious government legislation.

(4) A section should be added that guarantees the provision of clean water as a basic right in Ontario, regardless of the ability to pay. Just to illustrate that, in the event of metering, there should be some provision to address equity issues related to low-income families and individuals. There is a good argument to be made that metering, not necessarily by a private company, does lead to conservation. However, I think it's really important to address equity issues in that eventuality. This provision could be part of this bill and perhaps be added to the Environmental Bill of Rights.

(5) I also endorse all the other amendments and deletions proposed in the joint Canadian Environmental Law Association and Great Lakes United written briefs, particularly the provision for a strong regulator in the event of privatization and an inclusion of a safe drinking water act within the bill.

(6) I propose a public inquiry into the problems facing water distribution and sewage disposal in Ontario. This inquiry should address what real actions can be taken to improve water and sewage service delivery in the province. A focus of the inquiry — this is something that isn't addressed in the bill and that I haven't heard a lot of talk about — could be on the real cost savings to be found in living machine technology and wetland filtering of waste water products, which is something a lot of communities are adopting in other jurisdictions.

Above all else, this bill should address the larger issue surrounding water provision and sewage disposal in the province, and that issue is the public good.

**The Chair:** Thank you very much. We have three minutes remaining in your presentation time, and we'll begin with the official opposition.

**Mr Dominic Agostino (Hamilton East):** Three minutes total?

**The Chair:** Total.

**Mr Agostino:** Just to follow up on your last point, when you said obviously services must be delivered for the public good, that has to be the first priority in government, and I think you addressed part of it earlier. Do you believe that giving private corporations the ability not only to own the infrastructure of sewer and water services but, more importantly, the ability to set the rates



they will charge for those services is in the interests of the public good, and does it serve the citizens or the shareholders of those corporations?

**Mr Sandlos:** No, I don't. I think the example from Britain makes the case that it's not in the public interest because of the high rates there. I'd also like to say that environmentally, when we're dealing with a public commons resource such as water, we can also see many cases where a public commons such as forestry or fisheries has actually been destroyed by further privatization of that public commons. I think a close study of the Newfoundland fishery would show that is the case. When shareholders and the bottom line are the question, the main concern of that corporation, then I don't think the public good is in mind. You just have to look at the management of our food system and how much food in a grocery store barely resembles actual food. I think there is a good analogy there.

1020

**The Chair:** I would just ask you to keep your answers brief, because we're almost out of time.

**Mr Sandlos:** Sure.

**Mr Floyd Laughren (Nickel Belt):** I appreciate your presence here. I wanted to ask you to do something to test whether or not the government members are being disingenuous when they say they support public ownership of sewer and water systems. In about 10 days — it's scheduled for April 30 — we'll be doing clause-by-clause, which is an open process here. If the government members themselves move an amendment to prevent privatization once the waters systems are turned over to the municipalities, then they are being sincere when they say they want it to stay in public hands. If they either don't move an amendment themselves or vote against opposition amendments, which surely will be put, to prevent the privatization of sewer and water, then you will know whether or not the government members are being disingenuous or sincere.

That's what I'd ask you to do if you could find the time — it's in the afternoon; after question period is when this committee meets — attend the meeting and see whether or not there is support for public ownership of sewer and water. That's a request I have of you.

**Mr Sandlos:** Okay.

**Mr Doug Galt (Northumberland):** Thank you for your presentation. I have just a couple of comments. Bill 107 is about ownership: 230 plants are owned by OCWA rather than by the municipalities; the other 75% are owned by the local municipalities. This bill was triggered because 60 communities asked for ownership. They were paying a mortgage on something when they did not have their name on the deed. I don't think you'd be very happy if you were paying for a mortgage on your home and the province owned your home.

The second triggering factor was the David Crombie commission and their report. They recommended we do exactly what we are doing. Going back to paying this mortgage on your home and the deed was in the name of the province of Ontario, I think you'd be pretty concerned, and that's how the municipalities, at least 60 of them, were feeling prior to this bill being brought forward.

Your last comment, as it related to sewage and looking at biological filtration, one of the reasons that's hung up is because of the red tape and the present regulations. They are being reviewed, and yes, we do want to move forward with that kind of advanced technology, and that's what reg reform is all about.

**Mr Sandlos:** I agree that if a community wants to take over their own sewage and has the financial means to do that, there should not be any kind of patronizing relationship between the province and municipalities. Local control can often lead to interesting alternatives, like living machine technology, but I suspect that this is about forcing those services, as with the other downloading proposals, on to municipalities, and I think that is wrong. The way it's being done is wrong, and David Crombie has come out and said that that's wrong, referring to the broad offloading proposals. That's what I really spoke out against.

**Mr Galt:** He was very clear on this, and it's in writing that this is how he wanted it. We're doing exactly what he suggested.

**The Chair:** I'm sorry, I have to cut it off. Our time has expired at this point. Thank you very much, Mr Sandlos, for taking the time to come before us this morning.

#### TORONTO BOARD OF HEALTH

**The Chair:** I'd like to now call Mr Tabuns, please. Good morning. Welcome. If you would please introduce your colleague for the record. You'll have 15 minutes for your presentation time, including questions from the caucus.

**Mr Peter Tabuns:** My colleague is Kim Perrotta, from the department of public health, environmental protection office. My name is Peter Tabuns. I chair the board of health for the city of Toronto. I'm here to represent the views of the board on Bill 107.

We don't need a crystal ball to know what would happen when the floodgates to privatization are opened. Seven years ago, Conservative wisdom in England established privatized water authorities. In the first year alone, company profits increased by 90%. Two years later, they had increased by 137%. However, on the consumer side, things weren't quite as rosy. Water bills for customers of privatized companies rose from C\$96 in 1988 to C\$460 in 1995.

In addition, there was the imposition of water restrictions, delayed repairs and increased consumer disconnections. During the summer of 1995, many consumers had severe water restrictions imposed on them. For example, Yorkshire Water actually instituted rotating cutoffs on all water use for residential customers, an action that affected 600,000 people. The same company invested only C\$22 million in repairing leaks in 1994, when in the same year its profits exceeded C\$284 million. The number of domestic consumers who had their water supply disconnected increased by 177% by 1992, a direct result of the dramatic rise in the cost of water.

During the 1995 crisis, one private company, North West Water, actually sold four of its reservoirs to private land developers, which led to major shortfalls in available



water supply and severe water restrictions for its water customers.

Bill 107 radically changes the way the province's water and sewage treatment systems are to be operated, transferring ownership of 25% of the water and waste water facilities in Ontario from the Ontario Clean Water Agency to local municipalities, whether they want them or not.

The provincial government is providing the conditions under which privatization of water and waste water works in the province will take place. A number of local municipalities clearly do not have the necessary resources to maintain their facilities. That's one of the reasons I believe OCWA was set up in the first place: A lot of municipalities weren't able to provide clean, safe, secure water supplies.

In combination with sections of Bill 26 which allow municipalities to bypass provisions of the Public Utilities Act, Bill 107 appears to provide the terms for privatization, terms which appear to provide generous incentives. For instance, companies that buy public water and waste water facilities will have access to all properties connected with those facilities — some of which I'm sure are of great value for their real estate potential but have nothing to do with the generation of safe, secure water — and will not be required to pay interest on provincial grants.

A 1996 poll done by Insight Canada Research for the Ontario Municipal Water Association showed that Ontario residents are strongly opposed to privatization. Some 76% of Ontarians favour water utilities being controlled by municipal officials, versus 19% who favour utilities being controlled by private business. If the government is truly committed to keeping these utilities public, Bill 107 should explicitly prohibit privatization.

The public health department and the board of health are concerned about the potential impact of this bill and the privatizations that will follow. In August 1996, the British Medical Association publicly called for action against the disconnection of water supplies because of the public health risks associated with disconnections. I quote from their report: "The British Medical Association believes that the disconnection of water supplies should be made illegal because of the vital role of water in health and disease prevention."

Our public health department notes that the provision of a clean, safe water supply has been one of the cornerstones of public health since the mid-19th century. It's well known that disease can be spread when sewage is not properly treated and monitored; that people who do not have access to clean running water are at greater risk of communicable disease; that inadequately treated drinking water can transmit communicable disease to large numbers of people; and that groundwater, and thus well water, can be contaminated by improper construction and location of septic tanks.

Despite these public health realities, the provincial government is proposing, with Bill 107, the transfer of responsibility for these 230 water and waste water facilities to municipal governments, which may not have the resources or expertise necessary to provide high-quality water in a reliable way at an affordable price to their residents.

The board of health recommends:

- (1) That Bill 107 should be withdrawn.
- (2) The provincial government should remove the Ontario Clean Water Agency from the list of agencies to be considered for privatization.
- (3) The provincial government should establish a full public inquiry into the management of the province's water resources, which would include an examination of the following:
  - (a) The role of the provincial government in the planning, delivery and monitoring of the water and sewage services in the province;
  - (b) The models of ownership for water and waste water works in the province; and
  - (c) The ownership, management and conservation of the province's water resources as a whole.
- (4) If Bill 107 proceeds, it must be amended to explicitly prohibit the privatization of water and sewage facilities in the province.

1030

**The Chair:** We have eight minutes remaining, so that's just under three minutes per caucus.

**Ms Marilyn Churley (Riverdale):** Thank you, Mr Tabuns, for presenting to us this morning. Because you're a member of Toronto city council, I think I can make the link between 103 and 107 here, because of the connections with downloading to municipalities, and this is one of those downloading bills. Let me say first that Toronto city council has been, in some areas, far ahead of the province in terms of environmental protection and finding innovative solutions.

My worry here is, if Bill 103 goes through and amalgamation happens, what do you think will happen to those kinds of innovative solutions around, say, Ashbridges Bay and dealing directly with some of the local problems? I understand, of course, that the city of Toronto, unlike some of the smaller municipalities that have really serious financial problems, will be affected differently. If this bill goes through as it is and Bill 103 goes through, what do you think is going to happen to our systems here in Toronto?

**Mr Tabuns:** In terms of water and waste water systems, there will be pressure to sell those off to the private sector. The expectation of our senior staff who have looked at the future financial picture is that the megacity of Toronto will face substantial financial challenges, if not financial crisis. I would say that in that atmosphere, in the context of municipalities being able to sell off infrastructure, there will be great pressure to sell this off. Given the British experience, I don't think that bodes very well for the health of the people who live in the Metro Toronto area.

**Ms Churley:** Do I have another minute?

**The Chair:** You have about half a minute; very quickly, please.

**Ms Churley:** Yesterday as I listed the areas where this government is actually weakening and deregulating water quality laws and regulations, I forgot to mention this one: that of course they plan to weaken the MISA requirements under the Red Tape Review Commission, so the reporting requirements will be weakened. I just wanted to add that because I forgot to mention that yesterday.



**The Chair:** To the government caucus, Mr Ouellette, Ms Fisher and then Dr Galt.

**Mr Jerry J. Ouellette (Oshawa):** I have a couple of quick points. You talked about the percentage increase in profits in the British example. Do you have any relations or analysis of how it compares to usage?

**Mr Tabuns:** In terms of increased water sales leading to increased profits?

**Mr Ouellette:** Yes.

**Mr Tabuns:** I don't have those figures with me, sir. My understanding was that it was a profitability that arose from increasing the cost of the product and reducing the investment in the infrastructure.

**Mr Ouellette:** You also talked about the fact that there were a number of shutoffs.

**Mr Tabuns:** A dramatic increase in the number of shutoffs.

**Mr Ouellette:** Locally, though, we've had a number, I know, in our community. We're constantly asked to conserve. Odd and even house numbers are used on a regular basis through the summers. How do you find that different?

**Mr Tabuns:** From what happened in Britain, where there were rotating cutoffs? I find it extraordinary that a company would sell off its reservoirs to a real estate developer in a situation where they were facing substantial water shortages already. I think any municipal government that did that would find itself turfed out of office.

**Mr Ouellette:** But locally we already have rotating conservation programs.

**Mr Tabuns:** We may have conservation programs, but I'm not aware of cities in Ontario where the water is cut off on a regular basis in the summer.

**Mr Ouellette:** Do you have analysis as to why there were so many disconnections? What was the reason or the main reasons why there were so many disconnections in Britain?

**Mr Tabuns:** As the price rose dramatically, low-income households could no longer afford to pay for water, so they stopped paying.

**Mr Ouellette:** We already discussed that we didn't have a relationship of the usage of water as it relates to profit. Do you have facts to say that it's strictly because of the cost of water that relates to the shutoffs or is it because of the inability to pay or back bills or what?

**Mr Tabuns:** Well, when people found that their water bills were going up four and five times over what they'd been before, and they simply did not have the cash, they stopped paying, and they would try to rely on their neighbours.

**Mr Ouellette:** For those people where it went up four and five times, what were their usage rates? Were there any increases or change there?

**Mr Tabuns:** From the British press reports, people in fact dramatically cut back on their water use. They still couldn't afford to keep the water flowing through their taps. In fact, people were going on systems where they'd flush their toilets once a day, which, as you can imagine, was not entirely desirable.

**Mr Galt:** I have three quick questions. As you were talking, "Who's to pay?" was coming quickly to my

mind. Secondly, Toronto has owned its water works literally forever; it has never been privatized. We're now bringing in penalties with the transfer of ownerships, the penalties being they have to pay back grants, so why now would a city like Toronto privatize their water, which is where you're from? Third, Toronto, I hear from you, is making recommendations to rural Ontario. Rural Ontario loves to hate Toronto. I don't know why you'd want, from Toronto, to lay solutions on to rural Ontario, where 60 of those communities are recommending that they'd like to have the ownership of their water works.

**Mr Tabuns:** You've asked me a number of questions. I'll start at the top. As to whether or not the city of Toronto would sell off its water and waste water system, we're very concerned about the implications of megacity and the downloading. Our best analysis shows that we will be in deep financial trouble if you proceed with what you're doing. In those situations, people are going to try and find a way out. I think selling off parts of the store may be the solution a lot of people embrace. I think the potential is there for the city of Toronto, or the reconstituted city of Toronto, to try to solve its financial crisis by that sale.

In terms of telling rural Ontario what to do and what not to do: My understanding of this bill is that you're simply turning over ownership to all municipalities, whether they request it or not. If a municipality requests ownership of its water system, can deliver that water at standards that are found acceptable and is not going to be privatizing, then I see no reason not to turn it over to them. But this isn't an exercise in local option; this is, as far as I can tell, a download. You're turning over these agencies to these municipalities whether they can run them or not. My understanding was that OCWA was set up in the first place because many municipalities couldn't meet provincial standards for water quality.

**Mr Galt:** They're already running them. It's simply a transfer of ownership.

**The Chair:** I have to move to Mr Agostino now.

**Mr Agostino:** I appreciated your presentation, Mr Tabuns. I find it fascinating, because we've been through two days of hearings and we're on the third day, and all I keep hearing is government members saying: "Well, it's not really about privatization. This bill is about simply transferring that 25." It continues to be the smokescreen and it continues to be the political spin the whiz kids in the Premier's office have offered up to members to pitch at these hearings days after day.

Very clearly, and I've said this before and I'm going to continue saying it, this bill is not in isolation to other actions of this government. This bill ties in very clearly with the agenda of Bill 26, which was to take away some power that citizens had with regard to this issue and voting in referendums with regard to privatization of these services. It cannot be seen in isolation of the mega-dumping that's occurred.

Municipalities do not choose to sell water and sewer services to the private sector. Municipalities may be forced into it because of the tradeoff of huge tax increases that you have dumped on taxpayers or having to sell one of their assets to offset those tax increases. That is the reality. I'm amazed, because not one member

of this committee, of this government, will say that privatization of water and sewers is a good thing; they will all tell you how bad it is and how evil it is and how it would not work. However, not one of them yet has had the courage to come forward and say, "We will bring forward an amendment to stop that from happening."

I read, interestingly enough, and you'll appreciate this coming from Toronto and knowing what they have done to you in regard to the supercity, that the minister said: "Prohibiting such privatization in the bill will be an inappropriate intrusion by the province. The municipalities are the rightful owners. Where do I get off saying, 'You can't do that with your particular system'?"

I find it ironic that they're saying they don't have the right to tell municipalities whether or not to sell their water and sewer systems. They seem to have no problem having the right to tell the area municipalities in Metro Toronto, "You're going to be part of this whether you want it or not." They intrude in many other parts of municipal jurisdiction, but in this area the minister says, "Well, I don't believe in it, but I can't tell them whether to do it or not."

1040

Would you feel comfortable with an amendment that would prohibit municipalities and would you as a city councillor see it as an insult or an intrusion if the province came in and said, "The city of Toronto, the city of London, the city of Hamilton," and so on, "you cannot sell your water and sewer services to the private sector"? Do you see that as an intrusion or do you see that as the role of provincial government?

**Mr Tabuns:** I think it's the role of provincial government. If in fact Bill 107 goes ahead, I think it should be amended to prohibit privatization. You'll have other problems that arise from this, and I think they'll come out in poor water quality in cities that don't have the money to invest, as they should, in a good water system.

**Mr Agostino:** So you don't see it as an intrusion upon your right as a councillor?

**Mr Tabuns:** No, I don't.

**The Chair:** Thank you very much. I'm sorry to interrupt, but our time has expired. Thank you for taking the time to come before us this morning with your perspective. We appreciate it.

#### CANADIAN ENVIRONMENT INDUSTRY ASSOCIATION, ONTARIO CHAPTER

**The Chair:** I'd like now to call Mr Mori Mortazavi, please, to come forward, from the Canadian Environment Industry Association. Welcome.

**Mr Mori Mortazavi:** Good morning, ladies and gentlemen. Thank you for giving me the opportunity to exercise my right to give you some comments that I believe would be constructive in the process of downloading the water and sewage works to municipalities and also for establishing an effective and responsive private-public partnership for better protection of human health and the environment in Ontario.

My name is Mori Mortazavi. I am a consulting professional engineer with more than 30 years of experience in the geo-environmental business, interpretation and

implementation of environmental protection legislation, regulations, policies and guidelines, green industries as well as public infrastructures.

My presentation will consist of three major parts: background, issues and recommendations.

The water and sewage infrastructures existing in Ontario are among the most fundamental public services that have been established and have evolved over more than three decades under the auspices of the Ontario Water Resources Commission, Ministry of the Environment, Ministry of Environment and Energy and, more recently, the Ontario Clean Water Agency.

The water and sewage works are designed, constructed, operated and monitored for yielding sufficient water quantity at a constant and dependable rate and sustainable quality for most of the consumer demands across the province; and for appropriate collection, transmission, treatment and disposal of sewage without inflicting adverse effects on the environment. The conservation and sustainability of resources have been among the essential factors considered in the design and operation of water and sewage works. It is very important to note that from hydrogeological, contaminant migration and adverse effect viewpoints, the principles controlling the design, construction and maintenance and monitoring of these infrastructures should be uniformly and globally implemented across the entire province in compliance with the established goals, policies, objectives and implementation procedures.

Under Bill 107 it is understood that:

The Minister of Environment and Energy would have the power to transfer the ownership of these works that are currently owned by OCWA to municipalities.

Most of the responsibility for regulating these works would be transferred to municipalities; and if municipal organization does not exist, the Minister of Municipal Affairs and Housing will take the responsibility. Furthermore, a municipality may apply to the Ontario Municipal Board to resolve any dispute that may arise among the municipalities with respect to these works. You can see the diffusion of responsibilities in the new regime.

Municipalities will be facing up to 40% in cuts in transfer payments from the Ministry of Municipal Affairs and Housing. With such huge reductions, it is not clear how they will be capable of picking up the slack created by other huge cuts from the Ministry of Environment and Energy and the Ministry of Natural Resources and conservation authorities. However, Bill 107 provides stipulations for privatization or partnership with the private sector for construction and operation of the water and sewage works by which the municipalities can further delegate their financial and service provision obligations to various private sector entrepreneurs.

Issues: Considering the extreme significance of the water and sewage works on the public's health and safety, conservation and sustainability of water resources and protection of the environment, the author strongly believes that the following issues should be resolved prior to finalization of Bill 107:

(1) Considering the existing limited resources of municipalities, the proposed downloading of provincial obligations, if ever successful, is to be extremely slow,



and OCWA should continue assuming responsibilities and operate for a considerable future period of time.

(2) Due to the absence of water supply and sewage disposal standards — please note that we do not have standards in Ontario. There are guidelines, objectives and policies; there are no standards in Ontario. If private sector entrepreneurs show up to take over the water and sewage works in either total ownership or in partnership with municipalities, who would monitor and assume the liability for providing clean water and proper sewage disposal? We totally agree with the Honourable Norman Sterling that the quality of our water is not negotiable. We also agree with the Honourable Norman Sterling that Ontario's high policies, objectives and guidelines should be globally and uniformly implemented. This is from his address to the Legislature on January 15, 1997.

How would the adverse cross-boundary effects on resource conservation and the environment be effectively and consistently corrected across the province? How would a level playing field or consistency be maintained among municipalities with respect to public health and safety measures?

With the responsibility and liability diffused among ministries, municipalities, private sector entrepreneurs, the Ontario Municipal Board and other ministries, it is not clear how the service quality and protection of human health and the environment would be equitably maintained across the province; whereas environmental quality and public health at large, not for this generation but for future generations, cannot recognize political boundaries and should not be politicized.

It is not clear if a feasibility study on Bill 107 implementation has been undertaken and the study findings justify the subject downloading from the standpoints of economics, sustainability and long-term investment values in the protection of public health and the environment.

#### Recommendations:

The Ministry of Environment and Energy should continue its essential function of setting up the policies, objectives, guidelines and regulations and hopefully in the future the standards controlling the design, construction, operation and maintenance of water and sewage works in compliance with the provisions of water resource and environmental protection acts, unless the acts are going to be changed and the ministry's legislated obligations are also going to be delegated.

1050

With the fast and frequently changing environmental criteria and regulations — they change continually — as more information and data are compiled on the effects of contaminants on human health and the environment, the Ministry of Environment and Energy should remain the overall policymaking and regulatory agency across the province.

In the absence of environmental standards and fast and frequently changing environmental regulations, the professional engineers, such as myself, would be hardly able to accept the entire liability associated with the design criteria unless comprehensive risk assessment and risk management studies are undertaken for every single case under consideration and overconservative contingency measures are employed, which will be very

time-consuming and costly. This is another reason for enforcing the abovenoted recommendations 1 and 2.

The downloading of the Ministry of Environment and Energy's mandate of water and sewage works to municipalities should be substantiated by a comprehensive feasibility study of long-term economic and sustainability gains and adverse impacts on the public welfare. The study should also clearly identify the goals, targets and procedures upon which the municipality should be prepared and equipped so as to be capable for undertaking this mega-task.

To maintain the overall MOEE policymaking and regulatory role for equitable quality control procedures and a unified implementation procedure by the municipalities across the province, a public-private partnership model seems more beneficial than total privatization of these works.

**The Chair:** Thank you very much. We have four minutes remaining, so just over a minute of questioning per caucus.

**Mrs Barbara Fisher (Bruce):** Thank you for your presentation this morning. It seems rather obvious, to me anyway, that you've studied the intent of what we're really trying to do with this whole system. I would like to address the issues of your recommendations, and that can be done very quickly; it's not with questions, it's actually with comments.

We don't disagree with 1 and 2 at all. It appears you're very much on track and have an understanding of what we're trying to do in terms of the public and municipal partnering.

Regarding number 3, we will have presentations this afternoon from representatives from other groups of the engineering community, and we look forward to those types of negotiations. I think that's a key word in this whole thing, "negotiation," where we work together to address the issues of who is responsible for what. There seems to be a different twist all the time in terms of the verbiage and how somebody addresses that. We see it as a working partnership, and I'm glad you understand it that way as well. We recognize fully that negotiation has to take place to make that happen.

I would like to clarify a point for the record, if nothing else. There's no intent here to reduce the level of responsibility of anybody who undertakes the operating practices of any facility that is turned over to a municipality, and rightfully so, because they're paying for it anyway. The idea here is that where OCWA is in contract today, they'll have the opportunity to bid again on that same provision of service. If not, somebody must be fully licensed and qualified to provide that service otherwise. So there's no intent whatsoever to put at risk the quality of service that's being provided. I think your presentation identifies that, understands that, and we look forward to working together on a negotiation basis to make that happen for the municipalities.

**Mr Mortazavi:** Thank you very much for agreeing with most of my presentation. But remember, I'm a professional engineer, I'm a practising engineer, in the trenches, actually confronting all the problems in reality. My concern is that with the cuts in the Ministry of Environment and Energy, the Ministry of Natural

Resources and conservation authorities, I do not realize how this can be continued even in the old system, let alone that the ministry is going to make the policies and regulate the private sector or partnership with the municipalities; that's one.

Second, when you enter into a partnership with the private sector, any municipalities or the ministry, we have to consider the entity as a business entity, and we should look at all those terms we use from legal points of view in making sure we make the right decision when we do that, because, as I said, some of the policies and regulations cannot be presented in a court of law and you can hardly find a licensed, competent engineer to even take the responsibility of the government, of the Ministry of the Environment, for enforcing those guidelines.

Therefore, the work that the ministry has done for more than two decades is really valuable and it does not have to dissipate, depending on the public sector to replace or take the responsibility. That's my entire issue. I'm not against the public-private partnership, but it has to be done properly, and with this haste I'm afraid we will create more waste.

**Mr Agostino:** I appreciate the recommendation. I'm pleased to hear that government members agree with some of what you have said here. I guess the concern I would have, though, is that you can talk the talk but you have to be able to walk the walk through this. When you look at the history and talk about enforcement of regulations, standards, policies, objectives, one must wonder who's going to do this, and with what budget.

The overall budget of the ministry has been cut by about 39% in the past two years, about one third of the staff has been let go, so it would be an interesting question to see who's actually going to do this work. It sounds great on paper. There's a reality between what's in regulation and on paper, and if you don't have the staff or the ability within your budget to enforce those guidelines and those regulations — this is sort of a step in that direction.

You talk about a public-private partnership. As you know, there's nothing in legislation that would prohibit a municipality from making it a totally private ownership issue. I guess I'd like to know, in your view as a professional, do you believe it would be in the best interests of consumers if a private company had total control and ownership of the facilities and total control and power to set the rates it would charge the consumers?

**Mr Mortazavi:** I totally agree with you that first of all the issue has to be studied in detail. The significance and sensitivity of these resources and these works, in Ontario particularly, are far greater to be politicized and to put them as an urgent matter to change. It has taken more than three decades to come to this point, where we have a system that is working quite well, relatively speaking, with respect to other provinces and other countries in the world.

Secondly, I agree with you that being a practising engineer working with the municipalities, I know the exact problems. We should not download the entire system. We should go with at least a pilot project. Even with the public-private partnership, we should pick up one of these projects and go through that.

Thirdly, why don't we learn from the experience we have with other ministries? We have public-private partnerships in the Ministry of Transportation with respect to highway construction and other things. Let's learn from the experience we have gained in a very short while from that perspective.

We have had comments on the same grounds when they were going to privatize the maintenance of the highways, the construction of the highways. We, as consulting engineers and practising engineers, were adamant to say to the Ministry of Transportation: "You cannot delegate your responsibility that the Legislature has imposed upon you. You have to be responsive to the public."

**The Chair:** Could I ask you to keep your answers just a little briefer?

**Mr Agostino:** He spoke very well.

**The Chair:** I know that. I'm not denying that.

**Mr Laughren:** Mr Mortazavi, I very much appreciate your presentation. It was very thoughtful and balanced. You didn't just simply take one side of the issue and hammer away at it, and I appreciate that very much.

I'm confused about one part. By the way, the questions you ask are the right ones, in my view, even though you haven't provided the answers to them. I think that's up to this committee, to work out the answers to those very pertinent questions in here. That's a very nice way to put it to the committee.

I'm confused about the second of your questions, though, and maybe you could help me. "How would the adverse cross-boundary effects on resource conservation and the environment be effectively corrected?" Quite frankly, I don't understand that question. Can you help me?

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**Mr Mortazavi:** Take, for example, the Oak Ridges moraine. It may fall into several municipalities. When we want to ask the municipalities to take the responsibility of design, operation, construction and monitoring of sewage systems on that sensitive water resource, which is the headwater of the greater Toronto area watershed, if they go with different monitoring, different quality control, different criteria for the design —

**Mr Laughren:** Because they're different municipalities.

**Mr Mortazavi:** Yes — then we are inflicting on one global watershed and water resource different guidelines or different criteria. From a hydrogeological point of view the water resources cover a lot of political boundaries. How do we ensure that's a level playing field or consistent in the criteria of implementing the procedures and that making these work effectively will not affect that environment adversely?

**Mr Laughren:** That is helpful. I'm going to keep your questions, keep track of them, because I really think they are the right ones to ask.

**The Chair:** Mr Mortazavi, thank you very much for taking the time to come to the committee this morning. We appreciate it.

I'd like to ask the committee's permission. Our next presenter, Karen Tilley, is unavailable to attend and has asked that Karen Buck be allowed to present in her absence. Is there agreement? Agreed.



**Mr John O'Toole (Durham East):** Is this a replacement?

**The Chair:** Yes.

KAREN BUCK

**The Chair:** Welcome, Ms Buck. You may begin. You have 15 minutes for your presentation.

**Ms Karen Buck:** Thank you very much for your time to hear my submission.

As a member of the public — and I also sit on the board of Citizens for a Safe Environment in Riverdale in the east end of Toronto — when I read Bill 107, I was really shocked that it didn't contain any more than it did. The public resource of water was being protected and also the services were being transferred, I understood, but it was very difficult to tell if it was just a wholesale sellout to private companies, which has been the rumour.

As a member of the public, I was dismayed that the bill seemed to lack a concern for our greatest resource, our drinking water, and it felt to me that maybe the bill merely hands over all the water treatment plants and waste water or sewage treatment plants to the municipalities without adequate provincial funding. I think plants that have been run with provincial money before — it can't just be taken away and the municipalities left to raise their taxes, unless there's a provision that the taxes will be reduced at the provincial level.

I was also surprised that there was no mention of an overseeing regulatory body with enforcement powers, because I think that really goes hand in hand. I've also heard — these have been rumours and myths and I'm not quite sure how it will actually come to be — that there's a lot of downsizing in the Ministry of Environment and that people may not be able to follow up and enforce regulations. That's a concern for me.

I thought the bill lacked the fact that there was no public voice required for the sale of transferred utilities and lands from municipalities to private concerns. Maybe there wasn't an adequate payback structure of public moneys invested in water and sewage works if they were sold, and I certainly didn't see an outline of enforceable regulations that both municipalities and private concerns in receipt of public works and public lands would have to adhere to.

I did read the CELA presentation, and to a certain extent it coloured some of my comments, because it did reinforce some of the things that I believe in. Like they are, I too am recommending that Bill 107 be substantially amended. I have attached pages 13 to 18 of the CELA presentation because I do agree with their recommendations 1 through 8 and also their comments on the amendments to the Capital Investment Plan Act of 1993.

I don't agree with them when it comes to section 3 of the bill. Attachment B, which is the last page of my submission, is something that I have already submitted to the Environmental Bill of Rights registry.

I'll talk about section 3 of Bill 107. I do not agree that in unorganized territories, the general responsibility to regulate the construction and the use of sewage systems under part VIII of the EPA should actually go to the

Ministry of Municipal Affairs. It really should remain with the Ministry of Environment and Energy.

Within Bill 107 there should be adequate legislation to ensure that the MOEE has in place regulations that will ensure that systems under this section of the regulation will be permitted with adequate soil conditions, sufficient separation distances and proper design, construction and maintenance so that such systems, once installed, cannot adversely affect groundwater and surface waters, or result in other nuisance impacts to nearby land owners.

I think Bill 107 should allow the Ministry of Environment to enter into contractual arrangements with municipalities to assign inspection and permit-issuing functions to those municipalities, but it is imperative that Bill 107 also state that before issuing this responsibility to municipalities, the municipalities in question are actually in compliance with having appropriate expertise to handle that inspection and permit-issuing responsibilities.

I've attended FOCA conferences — that's the Federation of Ontario Cottagers' Associations. About four years ago we heard a presentation from the Ministry of Environment and they were saying that it was impossible even then, before cutbacks, for them to get around and do the inspection of septic systems.

I'm also on the steering committee of our Clear Lake association up in Humphrey township, and of ultimate concern are septic systems around that lake. Certainly, this is one of the issues that our members continue to wonder what is happening with the inspection on, and they would really like to see it handled by somebody.

I think the municipalities are closest. They could do it when there are sales in the area, or they could do it — I think sales in the area was one of the consensus things that came up in our association, that it would be something ongoing, but it wouldn't be overwhelming, that 100% of the septic systems were inspected in any one year. Certainly, they're looking for septic systems to be inspected and permitted properly.

Municipalities are in a situation that they could do that, but again, downloading everything to the municipalities certainly means it affects the tax structure within municipalities and the provincial government. I think you have to figure out what is going to be paid at the municipality and what is going to be paid at the province, so that in fact there are not hardships for people paying taxes.

I do believe that the municipalities must be responsible to a regulating body — and I've already talked about a regulating body. It could be the same body. But I am, and I think a lot of people are, really looking at the provincial government to be a leader as far as setting regulations and having enforcement actually happen. Over the past years, enforcement really hasn't been very effective, so here's an opportunity, even with less staff, to figure out a system where enforcement really does happen.

Bill 107 must reassure the public that municipalities given this responsibility are also responsible or liable for regulatory negligence. We've encountered it with our council in Humphrey township, where it is very debatable, with the staff and how they've organized their municipality, that inspections can happen, unless they are required to happen and they are liable for that.



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In conclusion, I'd like to say that water is a collective and indispensable public resource. Long-range planning and policy development of the Ontario government should not be subject to forces that place profits made from water or sewage above the public's right to the use of water, nor should the Ontario government jeopardize our water resource in any way, in any bill or legislation, such that water would be seen as an export commodity regulated by the North American free trade agreement, which could require a continued supply of our water as a commodity to the United States even if water shortages were to occur within Canada.

**The Chair:** We have four minutes remaining, so each caucus has one minute only for questions and answers.

**Mr Agostino:** Thank you for the presentation. It's clear throughout the presentation that you and many other organizations who have spoken before you believe that water should not be privatized, and that government simply has a role and a responsibility to ensure that there is access to clean, safe drinking water and services across Ontario.

This government may or may not proceed with any amendments to prohibit that possibility of privatization. That being the case, if they went ahead and allowed the opening for privatization, do you believe there should be an amendment in this legislation that would force municipalities to hold a binding referendum on the issue of privatization, so that if they were going to go ahead and do it, if the bill allowed it, there would be a provision in there that a referendum would have to be held, that the municipality would have to abide by those results if the public in that municipality said in that referendum, "No, we do not want the service privatized," and the municipality could not proceed? Would that type of provision give you some comfort level?

**Ms Buck:** There are projects that I'm working with in Toronto with the main sewage treatment plant, and I think it is possible for the services to be privatized, but I wouldn't like to see the water privatized and I wouldn't like to see the lands and the actual utilities sold without public consent. I wouldn't like to see that at all, really. But if a municipality would like to actually go ahead and privatize the services, I think there are a lot of successful examples, and we have one at the main sewage treatment plant now with the biosolids program where it's a private-public partnership that I think could be successful.

**Mr Agostino:** But clearly, setting the rates would still fall under municipal jurisdiction when it comes to water and sewer services; it wouldn't be a private company that would have the power to set those rates, but it would be a municipal council that would have that power.

**Ms Buck:** Right.

**Ms Churley:** Madam Chair, did you know that the Harris government has reduced the original staff from the water and drinking section of the ministry from 113 to 48, which is 42%? I'm not sure if everybody here was aware of that, and I wanted to add it to the list of the measures that this government has taken to actually deregulate in terms of protecting our water.

Thank you for your presentation. I've known you for a very long time and value very much your expertise and interest in this area.

I wanted to know this: If the government were to put a provision in the legislation that says very clearly that the water cannot be privatized, would you feel more comfortable with the legislation? Second, would you recommend to the government that it repeal the section of Bill 26 that says that municipalities can sell off their water supply without public consultation? Would that give you more comfort?

**Ms Buck:** It would give me more comfort. I don't want to see water being treated as a commodity. Also, I think the actual utilities should remain within the public sector. Again, I'll repeat that if you're putting it in legislation, keep the water, keep the utilities as public, but you can privatize the services.

**Mr O'Toole:** Thank you, Ms Buck. I respect the fact that you agree with municipalities taking on responsibility for wells and septic. I have a private well and septic and I consider it private, I consider it in my best interests to make sure it's functioning properly. I think driving responsibility down to the lowest level sometimes is the most sustainable method, without oversimplifying things.

With that kind of backdrop, I just have a simple question that I've been trying to follow through with most presenters. The current method for capital funding is when the province comes in and gives a big bundle of money out to build a water or sewer plant. The municipalities end up being the operator, if you will, mostly. I'm from Durham region. I'd ask the question, do you think the system should be operated on a full cost-recovery basis? If you want to have something sustainable and the province under its map grants is not going to be there — because there just isn't any money; we're borrowing it from Japan or somebody who will give it to us — should it design sustainable systems close to the users of those systems?

**Ms Buck:** I agree. I'm not positive, but people may be willing to pay more on their water rates so that there are sustainable systems.

**Mr O'Toole:** But that helps conservation, would you not agree? If I could show some relationship between the cost — here's the problem: It's actually blurred now. We're paying for the plants out of a provincial tax pocket and we're paying for the consumption out of our municipal tax pocket, really. It's a user system — it should be; not all are.

But if you put those together and made it very clear that the one way of having efficient operating plants — do you think this is a good plan, with that kind of reasoned justification?

**Ms Buck:** In Toronto, we have always paid for our plants and our infrastructure, except for the subsidies of, I think, 30% and sometimes 50%.

**Mr O'Toole:** Yes, 50%.

**Ms Buck:** But I do know that OCWA was running Mississauga's plant, so in fact my provincial taxes were going to pay for OCWA running Mississauga's plant. There are inequities across the province, that if you are going to start dismantling how funding is structured, you probably have the opportunity to make it more equitable all the way through. But I would say that if you are going to increase expenses at the municipal level, there should be some kind of way of triggering a saving in

taxes at the provincial level and this may be sorting out what the services are at the provincial level.

**Mr O'Toole:** It's 30%. That's what we're looking for in savings on the provincial side, the tax break.

**Ms Buck:** I do not agree with the downloading, and I'll put in a written presentation on Bill 106. I don't agree. I think property should have only the services.

**The Chair:** I'm sorry. I'm going to interrupt at this point because we are at time and we're moving into another area. I know that the committee members want to thank you for taking the time to come this morning. We were glad you were able to fill in.

### GREENPEACE

**The Chair:** I'd like to welcome Morag Simpson, representing Greenpeace.

**Ms Morag Simpson:** Good morning. There are seven recommendations that we're making for Bill 107.

Bill 107 should be withdrawn, but if it does proceed:

That water and water and sewerage facilities be explicitly excluded from privatization;

That the provincial government incorporate into any proposed legislation an explicit commitment to investing in high-quality research, development and monitoring, and that all records be available for public inspection;

That any proposed legislation incorporate the creation of an independent regulator — it's crucial in this case;

That any proposed legislation incorporate an insistence on exploring and investing in alternative water treatment methodologies through local and regional pilot projects;

That any proposed legislation incorporate a commitment to reinvest in acceptable quality infrastructure and maintenance; and

That the export abroad of drinking water for profit by privately owned companies should be prohibited.

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The safety and security of delivery of clean water to households and businesses is one of the things that separates developed countries from less-developed countries. The maintenance of a solid infrastructure, access to clean, safe water — these are the markers of a strong, healthy, stable economy. Outbreaks of things like dysentery, hepatitis A, cholera and other waterborne diseases are things that we and the greater public associate with the Third World. Yet in the UK, where privatization been tried and tested, outbreaks of dysentery have risen by 600%, hepatitis A by 200%, and contamination of drinking water by accidental spills, dumping, groundwater runoff and the like is a regular occurrence.

Also in the UK, where droughts were a regular summer feature of my youth, summer droughts are now endemic, but rather than leading to adequate conservation strategies, the conglomerates and multinationals that control access to the nation's clean water supplies have sold off reservoirs for land development and have systematically disinvested in maintaining an adequate infrastructure, to the point where apparently, reportedly, approximately 29% of the nation's water is lost to leakage from an aging and badly maintained network — all this, by the way, despite the presence of an indepen-

dent, if slightly toothless, agency set up to monitor the ability of the multinationals to deliver and maintain this precious resource.

The legislation, Bill 107, that is before this committee today cannot be reviewed on its own merits and has to be assessed in light of other changes that have been made by your government to environmental, municipal and health regulations.

In the last two years since you have taken office, you have substantially revised, revoked and removed a legislative framework that had been put into place over a period of 20 years that had included legislative initiatives started by the Tory government of Bill Davis and had been built on solidly by all parties and governments that have taken office at Queen's Park ever since.

The cumulative effects of these changes and their effect on the safety of water supply are of enormous concern to the public across the province. The changes that you have proposed and enacted are so wide-reaching that it would take hours to go through all of them, but here are a few that will directly impact on the quality and safety of water in this province:

Bill 26 — we've already had comments about that this morning.

Changes to MISA regulations will mean greater discharges of persistent organic pollutants into rivers, waterways and the Great Lakes bioregion.

Removal of funding for remedial action plans and offloading of responsibility for continuance of these programs on to the goodwill and deep pockets of the public and municipalities could halt these programs.

Changes in reporting requirements will mean poorer access for the public.

Laying off experienced enforcement officers and expert staff in the labs at the MOEE will have a serious impact not only on the quality and safety of water supplies, but also on the public's perception of agencies to deliver healthy, safe, clean water. Already in Toronto, many thousands of people do not directly drink the tap water for fear of contamination. Some reports actually show that about 75% of people in Toronto do not drink tap water, but rather use home filtration devices or bottled water.

Downloading of responsibility for delivery of essential services to the municipalities without mechanisms for financial support and without an outside and impartial regulator or regulating agency merely sets the stage for the worst kind of privatization.

Simply stating that Bill 107 does not privatize water and sewerage services and that the bill does protect the quality of Ontario's drinking water, without adequate monitoring and enforcement mechanisms and provisions built into the legislation, is just not good enough.

In 1984, the first North American outbreak of another waterborne contaminant, cryptosporidium, affected 400,000 people in Milwaukee, killing 100. Last year in Collingwood, another major outbreak of cryptosporidium had dozens of people visiting hospitals. This parasite is not killed or contained by the chlorination of drinking water supplies, but rather requires an additional investment in more sophisticated treatment and filtration technology.



A serious concern with the proposals and consequences of this proposed legislation is that technical upgrades, investments in alternative technologies and development of pilot projects that will test different methodologies will simply not happen, and we will be locked into an inadequate treatment infrastructure.

As Joseph Cummins told the *Globe and Mail*, reported just on Monday, "We've recently realized that Canada's water treatment facilities are nowhere near adequate."

Figures released by the World Wildlife Fund in 1995 show loading levels of contaminants from 30 of Ontario's sewage treatment plants into the Great Lakes and St Lawrence basin in excess of 293,000 kilos of heavy metals, which included zinc, cadmium, copper, lead, mercury and chromium, over 181 kilos of pesticides and 22,256 kilos of industrial chemicals, including PCBs, dioxins, furans, industrial solvents and cleaners. These identified discharges from sewage treatment plants only represent a total of approximately 75% of discharges from sewage treatment plants in 1995.

With little provincial expertise remaining, and the offloading of responsibility for regulating construction and use of septic systems on municipalities, regardless of whether there is an investment in expert staffing by the municipalities, safety and security are again an issue. Without proper inspection and enforcement, rural septic systems will continue to pose a significant threat to ground and surface water contamination.

Finally, I'd like to remind you of poll results that have been conducted on the possible privatization of Ontario's water. In January, as Peter Tabuns also reported this morning, an *Insight* poll showed that 76% of Ontarians favoured public ownership of this vital resource. Yesterday you heard that 86% of Ontarians believe that water is not a commodity to be sold for profit. I believe that the public faith in the ability of multinationals to deliver a safe, clean water supply is absent, and reflecting on the UK experience, this absence of public trust is warranted.

**The Chair:** We have five minutes remaining, so that's a minute for question and answer.

**Ms Churley:** I just want to thank you very much for your submission. I know you have a long background in this area and I value your expertise in this. I just wanted to add another area — you mentioned many of them and so have I — that I forgot to mention earlier: the deregulation of mineral exploration activities under the Public Lands Act and of course groundwater contamination due to mine exploration. Boreholes, as the members may not be aware, have been a serious problem up north for a long time; that's another area.

**Mr Laughren:** Is there no end to this list?

**Ms Churley:** No, there isn't.

I wanted to ask you a question. There were members in the House some months ago, when the minister suggested that privatization was a good thing and he couldn't wait to get on with it, who said that what happened in England could not happen here because that's not what they're proposing. If you read Hansard from England, Thatcher and the minister responsible said very similar things. I wanted to ask you your opinion on that, because they do say it couldn't happen here. Why do you say it can, given this bill and their responses?

**Ms Simpson:** As the bill stands at the moment, what was set up in the UK was the creation of a quango, which was supposed to look at, assess, intervene and monitor the delivery of safe, clean, healthy drinking water supplies in the UK. There is no such proposal in this legislation. Especially if you look at the legislation within the parameters of all of the other legislative changes that have been proposed in the last two years, there is no mechanism at all to monitor contamination; there is no provision for restricting pollutants from industrial sources into our waterways and rivers and thus contaminating the water. In actual fact —

**The Chair:** Wrap up, please. Sorry. I do caution members, when I say a minute, I mean a minute for question and answer. I'm going to have to cut off the presenters if the questions are too long and the answers are too long. I don't like to do that, so please. Mr Ouellette and Mrs Munro.

**Mr Ouellette:** Thanks for your presentation. A couple of quick questions. First of all, on point 6 regarding the water, does that include bottled water?

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**Ms Simpson:** I think when you're talking about the export of water, there are two reasons for including this point. One is the provisions of NAFTA, which would prevent you from not exporting once you've gone down that path.

The second reason is that if you are providing a framework for the export of water, you are not ensuring at all conservation strategies in Canada and particularly in Ontario.

**Mr Ouellette:** Okay. Also in the same manner that we're always hearing more about the percentage or number of truck tires, wheels that have fallen off, do you have any verifiable information or data regarding the percentage increase directly caused by the water changes in England, or is it just that the recording and the information that's being transmitted is — because of the changes, we're now seeing that this has always taken place and the recording is being increased?

**Ms Simpson:** Are you referring to the increase in outbreaks of dysentery and hepatitis A?

**Mr Ouellette:** The 600% and the 200%, yes.

**Ms Simpson:** Those were figures that were reported by the British Medical Association last year.

This kind of legislation, if you look at the kind of commentary that has been made in the UK, particularly in the last 18 months, where there have been serious shortages shown — last year, the editorial board of the *Financial Times*, for example, which is not known as a radical left-wing newspaper in the UK, reported that the privatization of water in England and Wales was nothing short of scam, theft of the public purse, legalized robbery and a mugging. This is pretty strong stuff for the *Financial Times* to say.

**Mr Ouellette:** I'm just trying to find out how they got to the 600% and 200%.

**The Chair:** Thank you. Mr Agostino.

**Mr Agostino:** Thank you for the presentation. I think you brought out a point in regard to regulations and monitoring, which is critical to all this. As we've seen in other areas, this government's philosophy in many areas

of the environment has been self-monitoring, self-regulation, self-compliance. They seem to be moving more and more towards leaving it to the goodwill of the private sector and the corporations to monitor and comply. In my own community we saw how well that worked 20 or 30 years ago, where chemicals and raw sewage were being pumped directly into Hamilton Harbour as a result of self-compliance and self-regulation.

The concern I have in this area, and I want to get your view on it, is that we're moving to the same thing. If you privatize water and then you move to the step of self-monitoring, self-compliance, you see a danger to public health as a result of that.

**Ms Simpson:** Absolutely. There's no question that will be the result.

**The Chair:** Ms Simpson, we thank you for taking the time to come before us this morning. We appreciate your advice.

#### ONTARIO POLLUTION CONTROL EQUIPMENT ASSOCIATION

**The Chair:** We now ask Mr Brian Gage to come forward please, from Ontario Pollution Control Equipment Association. Welcome, Mr Gage. You have 15 minutes for your presentation, and that includes questions from the caucuses.

**Mr Brian Gage:** I'll try to be brief. I've prepared a two-page note which outlines some of our comments to this committee. We take pleasure in making comments and thank you for the opportunity of having the chance to provide some input.

Just on background, OPCEA is a non-profit organization comprised of member companies which supply equipment and services to the water and waste water treatment industry in Ontario. I enclose — actually I haven't enclosed, but I can pass around this copy of our membership and the products that we supply, for your information, to provide you with a better idea of who we are and what we do.

OPCEA has been in existence since 1970 and its focus has been to service largely the municipal market for water and waste water treatment, the same market to which the subject Bill 107 applies. OPCEA is closely tied to another organization, the Water Environment Association of Ontario, the WEAO, and an annual technology transfer conference is jointly sponsored by the two organizations. The conference this year was in London. It was attended by about 700 people, some of whom you may have seen on Monday or Tuesday of this week while you were receiving deputations there.

Although OPCEA has no serious objection to the transfer of the water and waste water treatment plants and the collection and distribution systems associated with them to the municipalities which are served by those facilities, it is very concerned that those assets not be subsequently sold to the private sector. The people of Ontario have paid for those assets through provincial and municipal property taxes or through water or waste water surcharges, and to a certain extent they have mortgaged their future in order to enjoy the benefits of safe drinking water and unpolluted rivers and streams.

Bill 107 leaves the door open for the wholesale transfer of this vital infrastructure to private interests which take profits without necessarily adequately maintaining the infrastructure. Should this privatization occur, OPCEA member companies would likely suffer a decline in revenues, at least initially, which obviously is not in our interests.

Ontario has been a leader in providing water and waste water treatment for its population. This leadership was provided by the province through the Ministry of the Environment. The standards of treatment provided were higher here than in the other provinces in Canada and certainly a large number of our neighbouring states.

One result of this progressive, conservative and proactive participation, by originally the Ontario Clean Water Agency and subsequently the Ministry of Environment, was the birth and growth of companies right here in Ontario which subsequently formed or joined OPCEA. Those companies have developed expertise that is now being exported around the world. Many Ontario-based companies, such as Trojan UV Systems, are now world leaders in their areas of expertise but owe their very existence to the efforts of the Ministry of the Environment, and those company profits are taxed right here in Ontario.

The Ontario Clean Water Agency, or OCWA, the operations section of the Ministry of Environment which was spun off by your government, owns and operates plants which service a large number of rural communities. Those communities are of a size and population where qualified personnel capable of operating the treatment plants are hard to find. Furthermore, the costs of building or operating those plants are high due to the lack of economy of scale. These are plants which nobody wants to own or operate. They are plants which are vulnerable to eventual closure, but they are also the plants which support tourism and trade for the province as a whole and thereby can be justified on a provincial basis. Bill 107 ignores this fact or reality.

The equipment and services required for water and waste water treatment plants are very complex today. The expertise required to evaluate, purchase, install and operate equipment or services provided by OPCEA member companies is quite significant. The MOEE, or OCWA, has personnel with enough expertise to usually make the right decisions, but many of the small communities, when on their own, are vulnerable to making poor decisions which could ultimately threaten public health. It is in everyone's interests, including the members of OPCEA, that the right decisions are made, so if we have a concern, it is for the smaller communities serviced by OCWA.

The impact of Bill 107 on OPCEA will include the following: The number of clients we will have to service will increase, making it more difficult to service the marketplace, particularly in the remote areas; the requirement to meet Canadian content requirements in larger contracts will likely be reduced; the potential for credit problems will increase to the vendors with smaller communities or possibly the private sector.

There is an advantage in that the potential for more variation in what is actually used will increase, which



could lead to more innovation. The enforcement of regulations and the promulgation of regulations will be less encumbered with the MOEE not being in the business of both the operation of plants and enforcement of regulations at the same time. Perhaps with all the plants no longer the responsibility of the MOEE, through OCWA, the M in MISA will actually be promulgated and put into effect. This long overdue and promised regulation would be a stimulus for sales for OPCEA members.

One of the more immediate concerns of OPCEA is the manner in which the provincial government would participate in an infrastructure program currently being proposed by the federal government. The generally poor state of the water and waste water treatment infrastructure in Ontario has been well documented. One survey was done by Gore and Storrie, Mr George Powell and Sherry Eaton, which some of you may be familiar with. But the point is that practically all of the funds from the infrastructure program could be used right here in Ontario to improve our infrastructure, and by infrastructure I mean the sewers and water and waste water treatment plants in addition to potholes in our roads.

Given the history of funding splits between the federal, provincial and municipal governments, we foresee some difficulty looking to the province for their share when they have passed ownership to the municipalities with this bill.

OPCEA again would like to thank you for the opportunity to address this committee.

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**The Chair:** Thank you very much. We have six minutes remaining. That's two minutes per caucus, and we'll begin with the government caucus.

**Mrs Fisher:** I'll just take one second of that time, but I do want to comment on one of the points with regard to remote areas and perhaps the difficulty in providing service there. I happen to represent rural communities of Ontario and I find the opposite happening, quite frankly. I find that where OCWA had individual contracts, agreements to service and operate facilities in place now, just within the last six months we find six communities coming together.

The cost effect of that, to give you an example, is very beneficial to the communities. Just to give you one example, a year ago, a community of about 1,300 people purchased that service from OCWA to the tune of \$135,000. In working with other communities to consolidate some of that servicing requirement in rural communities, they actually reduced it to \$90,000. I find that is a significant savings for a small community.

I don't mean to be controversial with you, but I can tell you that some of the benefits and the gain that can be made by municipalities working together here can be shown through that type of negotiation.

**Mr Gage:** My response to that would be that it may be quite valid, your personal experience. It could be anecdotal. It could be that OCWA didn't have good numbers to present for the operations of the plants because they're relatively new in the business, and it may be that you were low-balled by another service provider that is looking down the road for additional contracts once they've established them in the community.

**Mrs Fisher:** Actually quite the opposite. The continuing contract is with OCWA.

**Mrs Munro:** I just have one quick question. On the first page of your submission you suggest here your concern about assets not being sold to the private sector, and certainly this is something that we have heard from others. I'm just wondering if you see this as likely. When you raise this issue, is it based on a premise that you consider it likely?

**Mr Gage:** I would say the likelihood is remote in that I would hope that most municipalities — and the past experience I've seen is in Hamilton-Wentworth and also in York region, that they've retained ownership of the infrastructure and looked for contract operations of services, and that I don't think we have a problem with.

It's when you actually sell those assets that you're constrained not only in the growth you can achieve within your community because you're beholden to a private organization that may or may not wish to concur with your growth plans. If we look back in history and see what happened 150 years ago, I think people will see the light and continue to do what we've seen being done to date.

But there could be communities that are very strapped for cash that are facing bankruptcy as a municipality that could look to privatization as a way of getting them out of an immediate problem.

**Mr Agostino:** Just along the same points, Brian, I think when it comes to the issue of privatization of these types of services, history is probably not a good guide because of the things that have occurred, as I've said a number of times.

The example you gave in Hamilton-Wentworth is a good one, distinguishing clearly between the operation of a facility with a company that comes in and may do it just as well and, as long as you provide contract protection for workers and those types of things, it could work and it could save us probably some money. But I think clearly a difference between that and outright owning the facility and the ability to set rates is the danger here.

Although it hasn't happened in the past, do you believe there's a real possibility here that as a result of dumping and downloading on municipalities which are having to offset those costs, the only real asset the municipalities have that the private sector may really want to buy into is this? Nobody is going to want to buy the TTC and think they're going to run it for a profit unless they charge \$10 a ride or something. Do you not see that as a risk that wasn't there in the past?

**Mr Gage:** We definitely see that as a risk. We've identified that in our response and we're concerned about it because we've seen experiences outside the country that lead us to believe that inadequate assurances as to how the plant was maintained were made and, as a result, excessive profits were made by companies that we ended up seeing here acquiring companies.

I just wanted to speak to Bill 107, which I see as being the privatization of the infrastructure and not the operations. So really the question about operations is a separate issue that should be addressed in some other way, but it's not being addressed in 107.

**Mr Laughren:** Mr Gage, thank you for your presentation. Are members in OPCEA largely private sector organizations?

**Mr Gage:** Yes.

**Mr Laughren:** Well, I'm shocked and appalled that you would come before us and be against privatization of a sewer and water system. What happened to your ideology? Did you get lost along the way?

**Mr Gage:** Mr Laughren, I work for a company called Degremont Infilco Ltd, which is owned by Degremont in Paris, which is owned by a company called Lyonnaise des Eaux, which is a large operations company, one of the largest in the world. I'm also a citizen of Ontario and concerned about the proper contracting out of operations. The companies I work for see no problem with operations. In fact, Lyonnaise has a practice of providing operations but not owning the infrastructure. It's a model that is foreign to France but one that was initiated in Britain. So speaking individually, I don't see any problem with what we've said here, and collectively, as a group, I guess the clearest point I received from the OPCEA board of directors when we discussed this was this one point about ownership of infrastructure and the concern about the maintenance of that infrastructure by the companies should you sell them.

**The Chair:** Thank you for taking the time to come this morning. We appreciate hearing your advice.

#### CONSULTING ENGINEERS OF ONTARIO

**The Chair:** I'd now like to welcome, please, Mr Mahoney from the association of Consulting Engineers of Ontario. Actually, is it Erin, Ms Mahoney?

**Ms Erin Mahoney:** Yes, it is.

**The Chair:** My apologies. I wasn't reading carefully. Welcome. Please introduce yourself and your colleague, and you have 15 minutes for your presentation.

**Mr Don Ingram:** Madam Chairperson, committee members, I'm Don Ingram. I am president of the Consulting Engineers of Ontario, and Erin Mahoney with me is the chairman of our liaison committee that functions between CEO and the Ministry of Environment and Energy.

The association of the Consulting Engineers of Ontario is pleased to be here today to present our views on Bill 107 to the standing committee on resources development. Consulting engineers have been involved with virtually all the municipal water and sewage infrastructure in the province and we appreciate the opportunity to offer our comments on the Municipal Water and Sewage Transfer Act.

CEO is an organization devoted to the business and professional aspects of the practice of consulting engineering in Ontario. More than 275 firms are members. "Consulting engineer" is a designation used by a professional engineer in private practice who has met the requirements of the Professional Engineers Act and who has been approved to use this designation by the council of the Association of Professional Engineers of Ontario. 1150

A combination of education, technical knowledge, experience, judgement, integrity and a high dedication to

a strict code of professional ethics and a code of consulting engineering practice are the hallmarks of our industry. The consulting engineer has an integral and vital role in advanced technological planning and design that is essential to the successful operation of projects which have a significant interface with the environment. Of relevance to Bill 107 is our expertise with respect to the sewage and water treatment infrastructure in Ontario.

The ingenuity and application of scientific knowledge to meet human needs, from the investigative process to completion of capital projects, places consulting engineers in a unique position to serve public and government bodies and to comment today on the proposed legislation.

CEO advocates contracting out by government departments and agencies with a view to providing greater opportunities in the free-enterprise system, producing world-class consulting engineering firms that export services and provide spinoff benefits to Ontario's manufacturers and suppliers.

We support the intent of Bill 107 to allow municipalities to take ownership of the water and sewage infrastructure which provides water supply and sewage treatment services to their jurisdiction. This compatibility in ownership with responsibility for service delivery and accountability at the municipal level of government will ultimately benefit the consumers of these services.

We believe this initiative will advance the province's objectives to reduce duplication and clarify the accountability for the water supply and sewage treatment systems in the province.

**Ms Mahoney:** By transferring the provincially owned water and sewage facilities to municipalities, this new legislation will clear the way for municipalities to determine the most appropriate service arrangements for their situation.

The fact that the bill does not preclude public or private partnership or ownership creates flexibility for the owner municipalities and the taxpayers of Ontario by providing choice and access to capabilities which may be possessed by one or the other of the public and private sectors.

Treatment and supply of water and waste water services are activities vital to the health and safety of municipal residents and businesses. Therefore, changes affecting the operations and staffing of municipal water and sewage systems must be carefully considered and well managed from the outset.

We believe that during the nine-month period prior to the date upon which the transfer order becomes effective, municipalities must have the right to complete a condition survey of the current status of system components; to also complete an evaluation of the assets, including any transferred water distribution and sewage collection systems; to complete an audit and inventory of the real estate; to conduct a financial valuation of the assets being transferred; and finally to determine any liabilities associated with these water and sewage systems. In the ownership transfer process the province must also preserve the rights of recourse for owner municipalities to those suppliers and contractors who have been involved with their water supply and sewage treatment systems.

The significant capital investment by the province in these water and sewage facilities must be protected and



facility performance guaranteed through establishment and enforcement of provincial standards. The province has a paramount role to control the quality of water and sewage treatment services through comprehensive standard-setting. Such standards must be founded on a consideration of health-based risk assessment and best available technology.

We are of the opinion that CEO can provide the province with valuable input into the standard-setting process. Consulting engineers can provide the pragmatic reality check needed in such a process. Any government body setting standards in the modern era must balance considerations of economic sustainability and best theoretically achievable performance. CEO's experience and objectivity in the water and sewage treatment industry can help establish this middle ground.

To continue to provide a high level of service to system users, the owner municipality must be able to choose innovative and cost-effective technology.

CEO wishes to reinforce to the standing committee our position on Bill 57, as it is relevant to the purpose of Bill 107, namely to facilitate delivery of better services at lower costs. The province must ensure that approvals requirements for water and sewage infrastructure are not a disincentive to process changes and the use of new technology.

Independent audits of water and sewage system performance accompanied by published audit results on key performance benchmarks such as water quality should be conducted and are expected to provide benefits to system consumers. The province should promote self-management using frameworks such as ISO 14000, the environment series, as one mechanism for owner municipalities to use to maintain a high quality of service delivery and as the basis for minimizing the province's involvement.

In the early 1960s, the Ontario Water Resources Commission provided the lion's share of the funds to build our water and sewage infrastructure. This commission and later the Ministry of Environment and Energy saw the need to develop and maintain an operating arm to ensure that the value of the infrastructure would be maintained and that the facilities would be operated properly.

This strategy was critical to maintaining the quality of the infrastructure. Some areas in the province are on their third facility in 25 years, while other properly maintained and operated facilities are still satisfactorily running the original 25-year-old pumps. Maintaining a high standard of operating expertise is the key means of meeting performance standards and extending the life of the infrastructure to keep costs down.

World-class water supply and sewage treatment facilities can only be sustained if they are operated by properly trained and certified staff. The Consulting Engineers believe that operator certification is an absolute necessity and must continue to be required to provide the taxpayers of Ontario with safe, reliable and cost-effective water supply and sewage services.

The Consulting Engineers of Ontario believe that by implementing the ownership transfer as outlined in Bill 107, the province's objectives to reduce duplication and

clarify the accountability for water and sewage systems will be achieved.

Our recommendations on performing condition surveys and conducting a financial valuation will provide the owner municipalities with the necessary information on the status of their water and sewage assets. We also believe that if those systems are operated by certified staff and independently audited, the quality of service delivery will be maintained at lower cost. By ensuring that regulatory approvals requirements do not impede but rather encourage the use of new, innovative process technology, as is the intent of Bill 57, monetary resources will be available for investment in those areas which can most directly benefit the environment: the capital infrastructure of the water and sewage works in the province.

In summary, the Consulting Engineers of Ontario support the direction of the changes outlined in Bill 107. We believe the consulting engineering industry will play an important role in assisting the province and owner municipalities in maintaining a high quality of service delivery from the water and sewage infrastructure in the province.

Don Ingram, president of CEO, or I would be pleased to respond to any of your questions.

**The Chair:** Thank you very much. We have five minutes remaining; that's just over a minute per caucus.

**Mr Agostino:** Thank you for your presentation. I just want to touch on a couple of points. You have one section called "Competitive Opportunities," and I want to focus on that for a second. Based on this, if I read it correctly, you believe it would be appropriate for full private ownership, operation and setting of water and sewer rates by private sector corporations.

**Ms Mahoney:** CEO does not advocate for privatization, although we do advocate for contracting out. Our position with respect to the bill is that it does not preclude municipalities of any choice that they may wish to pursue to provide them with the best and most cost-effective service for their jurisdiction.

**Mr Agostino:** Do you believe, though, that the privatization of the infrastructure — I'm not talking about running the operation but the selling of the assets and the control of the infrastructure — is a good thing or a bad thing for consumers in Ontario?

**Ms Mahoney:** We believe that the role of the public or private sector in owning the facilities — I think we're neutral with respect to that and believe it should be up to the specific municipality to decide what best meets their needs.

**Mr Agostino:** So you don't have an opinion on whether it's in the best interest of the public to have public or private ownership of these facilities?

**Mr Ingram:** We don't take a strong position with respect to privatization. We believe the municipalities involved should look at their size and their capabilities and make a determination themselves. We don't support wholesale privatization. We don't preclude it as an option where it suits the purpose and the situation within the municipality.

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**Mr Laughren:** Thank you for your presentation. I notice that at the very beginning, in your overview, you

say, "We support the intent of Bill 107 to allow municipalities to take ownership...." I don't think that's what this bill does. It makes them take ownership of water and sewage facilities infrastructure. I support your position. I think there's nothing wrong with the municipalities saying they want to if they want to, but this doesn't do that. I just wanted to make that point. It doesn't allow them; it requires them to.

Secondly, I wonder if you'd comment — I don't want to put you in the middle of a political battle, because that's our problem here, but the whole issue of privatization is an important one in terms of public policy for those of us who are elected to debate this. There are a number of issues at stake. One is the example of Great Britain, which is truly a horror story. I don't know whether you've followed that or not, but it really is horrible what's happened there with privatization.

Thirdly, a year ago, 76% of people in Ontario, in a statistically significant poll, indicated they were opposed to the sale of water and sewer assets, particularly water. This year it's up to 86%. So you've got a huge preponderance of the public who don't want this to happen. They don't like to see profits attached to water. I think they see it as one of those things like health care that shouldn't be.

So I wonder if that bothers you at all when you are thinking of the public position you will be asked about and have to take as an organization, if the experience in Britain gives you pause for thought, and the strong feelings of the public at large against this privatization.

**Ms Mahoney:** I know there are a couple of sections in the bill which require that should a private ownership position be chosen by a municipality, the prepayment of the debt is required. I think that type of requirement and the amount of provincial and federal contribution to the infrastructure that's being transferred to municipalities will dampen the tendency for these assets to come into private ownership. So I think that feature of the bill provides for perhaps a tendency for the infrastructure to stay in municipal ownership, public ownership.

**Mr Galt:** Thank you for the interesting presentation. I'm interested in your comments about regulations. There's no question that we do have regulations in place that actually impede good environmental protection. That's what the environmental review is all about, and the sooner we can get that through, the better for the environment.

We've heard a lot of presentations and some concerns about free water or low-cost water or who pays. I'm starting to be a little confused and I'd like to hear your response on this. I look to rural Ontario, where two million to three million people have private wells and their septic systems costing anywhere, in combination, probably from \$8,000 to \$20,000. They have to operate it and maintain it, and then we have other people who are on the communal systems and everybody's using it. I'm sitting here wondering who should pay. If I shouldn't have to pay, then who should pay for me? Do you have any feelings on who should be paying for this?

**Ms Mahoney:** Who should be paying for the private services?

**Mr Galt:** Any of them. In cities or towns, they talk about free drinking water sometimes, but it costs money.

**Ms Mahoney:** Yes. Absolutely.

**Mr Galt:** So I'm sitting back wondering, who should pay? Should it be rural Ontario paying for the towns?

**Ms Mahoney:** We believe that full-cost user-pay systems are appropriate to recover the cost of providing water and sewage treatment services to the province's residents and businesses.

**Mr Galt:** Certainly this has been masked in the past by provincial grants to municipalities and then they charge sort of their day-to-day operation, not recognizing the true cost to deliver water and take the sewage away.

**Mr Ingram:** If I might comment, I think one of the key aspects of that is that if you are ever going to encourage conservation and efficient use of water as a resource, the user has to recognize what the full cost is of providing that resource to him.

**Mr Galt:** We sure do in rural Ontario.

**The Chair:** Thank you very much for your presentation this morning. The committee members appreciate your taking the time.

#### WATER ENVIRONMENT ASSOCIATION OF ONTARIO

**The Chair:** I'd like to now call Mr De Angelis from the Water Environment Association of Ontario. Welcome. Please begin.

**Mr Bill De Angelis:** Thank you very much. My name is Bill De Angelis. I am a member of the executive of the Water Environment Association of Ontario. I'd like to read into the record a letter that we sent to Minister Sterling in January regarding our position.

"Dear Minister Sterling:

"The Water Environment Association of Ontario is an organization with a mission of 'A Clean Water Environment Today and Tomorrow.' We have a membership of 1,300 professionals drawn from federal, provincial and municipal governments, industry, academia, consulting engineers and equipment suppliers. We are a member of the Water Environment Federation. It is comprised of over 60 member associations situated throughout the world and has a total membership of over 42,000.

"Mr Minister, we would like to offer our support to the principle of user pay for water and sewage infrastructure. We were a member of the water industry group which supported the formation of the Ontario Clean Water Agency.

"Mr Minister, we understand that you wish to turn back to the municipalities the ownership of their water and sewage infrastructure. We believe that this step does not compromise the quality of service delivered to the residents of Ontario.

"We do have some reservations concerning the ability of the smaller communities, now serviced by OCWA, being able to afford the delivery of services on their own. They will presumably have to look to an organization such as OCWA, who would deliver to a number of communities, thereby obtaining the economies of scale. Minister Sterling, the Ontario Water Resources Commission and its successor, the MOEE operations branch and now OCWA, have delivered a high quality of service to these small communities by means of common staff or common administration. You will have to ensure that



combining of services continues in the future in order to provide services to these small communities. Our association stands ready to assist your ministry in whatever way you feel is best.

"We will be sending you a letter authored by the Ontario Water Works Association and the Water Environment Association of Ontario concerning the administration of the operator certification program."

It is signed by our president, D.C. Edwardson. As a matter of fact, one of the members of our executive attended a session this morning to signify our interest in getting involved in the certification program.

Just to sum up, we have been around for a long time. We have a lot of fine members in the public and the private sector with a wide variety of skills, and it would be our pleasure to assist you in your deliberations.

**The Chair:** Thank you very much. You have given us lots of time for questions.

**Mr Laughren:** Thank you, Mr Edwardson. Have I got the name right?

**Mr De Angelis:** De Angelis.

**Mr Laughren:** I'm sorry. Actually, I was reading the letter, the person who signed the letter.

When you talk about the transfer of the facilities back to the municipalities, I don't think that bothers most of us very much, assuming that the municipalities can handle that exercise. I think you expressed that as well. I represent in my own constituency, which is a sprawling northern constituency, many communities that have virtually no tax base, I mean as close to no tax base as you could get, no industry really, just a gathering of 300 or 400 souls in a small, isolated community. I worry a great deal about those.

If OCWA is disbanded, I think that responsibility — and I know the parliamentary assistant will help me if I'm wrong here — will be taken over by municipal affairs. The Ministry of Municipal Affairs will look after those municipalities.

*Interjection.*

**Mr Laughren:** Oh, I thought there were.

**Mr Galt:** With the septs, it being municipal affairs is suggested there, yes.

**Mr Laughren:** Oh, just the septs. I see. Well, then, I stand corrected. Thank you for that. Because I am worried about the small communities that can't afford to handle this kind of responsibility.

Secondly, and this may sound like a political statement but I don't really mean it that way, because of the downloading, the shifting around of responsibilities between the province and the municipalities, I think it's generally conceded that the municipalities are going to have added costs. I think there's a general concession to that fact in the province. If you talk to any of the municipalities who have done their numbers, they could prove it to you.

What I am worried about are those municipalities, because of that crunch, selling off their assets such as sewer and water facilities. I wondered what your organization thought about that, given the history that's occurred elsewhere when water has been privatized, what your view is of that.

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**Mr De Angelis:** The British experience keeps coming to the front and it has painted the entire industry with a black eye. There is a large difference between the selling off of the assets, which is what happened in the British experience, and what is tending to happen in North America, where we're going into contract operations.

As an organization, we don't favour public over private. We're mostly concerned about water quality and the most efficient use of dollars, and whichever way provides that service is the way it should go.

Our experience in looking at contract operation fields is, as you say, that towns that come upon a cash crunch that have difficulty financing infrastructure may look towards that option.

**Mr Laughren:** If in fact that has happened, who should be responsible for monitoring and inspecting and so forth of those systems then? Who should pay for that?

**Mr De Angelis:** Up until now, the ministry has provided that service for us. We believe it has been provided well and I don't know that there's any reason why that should discontinue. There's a role for a regulator.

**The Chair:** Sorry, we must move on. Mr O'Toole for the government caucus.

**Mr O'Toole:** We've heard over the last number of days of these hearings that the future is really moving towards GO/CO, government-owned, contractor-operated. I suspect that's kind of what you're saying here as well, reading through this. But I think the big disguise over the past while has been the way capital has been managed itself, how these plants actually got built. Maybe whether they were sustainable in a small community or not, there's always this understanding that the government would come in and just pay for the capital improvements or whatever. That's been the status quo, has it not, where we've been?

**Mr De Angelis:** I think that generally money has been available in the past for improvements.

**Mr O'Toole:** Maybe even money that we didn't have, right? Like, we borrowed it? I'd like Floyd to stay and hear this, because Floyd really was an expert at it. He used about \$100 billion.

I have a more serious question. As the full debate on Bill 98, the Development Charges Act, is in process, and every time I add capacity to water-sewer, the net beneficiaries are those new lots and those new homes, who should pay for the capital: the users or somebody living in Sudbury, like Floyd, on a private septic system?

**Mr De Angelis:** I don't have a comment on that.

**Mr O'Toole:** You don't?

**Mr De Angelis:** No.

**Mr O'Toole:** No, who should pay, really? If all of a sudden you have a farmer's field and we're going to put pipes in the ground and service it with a capacity plant, who should be paying for that? Somebody living in Thunder Bay? Who pays for the capital infrastructure in a community?

**Mr De Angelis:** I think, going back to the question on the available funds in the local communities, a lot of communities cannot support the types of system they require. So therefore —

**Mr O'Toole:** Maybe they shouldn't have them.

**Mr De Angelis:** Well, our onus is on environmental protection. I think that —

**Mr O'Toole:** Fully agree. Why don't they go to private sewage systems then?

**Mr De Angelis:** I think that's part of the debate that's coming out now.

**Mr O'Toole:** Exactly. And if you have private, you have less development, you can let the development — you have smaller levels of service in smaller communities. But it's got to be self-sustaining. That's what sustainability means. It doesn't mean that the Bank of Toronto bails out Napanee.

**Mr De Angelis:** As an organization, we support full-cost pricing of water and sewage.

**Mr O'Toole:** That's excellent. Thank you.

**Mr Agostino:** My colleague just opened up an interesting point, and I think that's part of what's driving all this, is how wonderful the philosophy of total user-pay sounds. The reality is that there is an imbalance and inequality in income. There's imbalance and inequality in assets in communities, in assessment growth. If we want to separate this province into hundreds and hundreds of little towns and communities and put walls and borders around each one and say, "If you can't make it on your own, that's tough," that certainly is not a vision that I share about how we should operate as a province.

I think we have a responsibility overall to communities who have difficulty looking after their own needs. That is why I think we try to operate the province in a manner that shows some care and compassion for each other.

I just think that philosophy, frankly, is the wrong way to go because you don't take into consideration ability to pay and need, and simply the survival of the fittest is the way we should operate. If you can't make it on your own, then I guess you just don't get water.

The danger that I see with this bill is that whole mentality as we move towards privatization, as we leave the door open to the private sector to come in, operate a facility, charge the fees and then at the end of the day, as is the experience in Britain, if you can't pay the water bill, tough. If you're a senior on a fixed income, if you're disabled, tough. We just shut the tap off and you make it on your own or go to a neighbour down the street and use their water.

I think it's this kind of debate that leads to the concerns we have in the opposition. I don't want to ask you all the questions, because you're doing a great job of staying out of the political debate and simply representing your view, and I think it's appropriate that you shouldn't be drawn into that.

I want to go back to Mr Laughren's point about the monitoring, inspecting, and sort of ensuring that the standards, whatever standards are in place, are met. Do you believe that should continue to be the role of government, that government should still have the responsibility to ensure that there's clean, safe water available to people across Ontario and that standards and regulations are met, or do you believe the private sector should play a role in that as well?

**Mr De Angelis:** It should probably be a hybrid system. I think you'll find in the US some areas are moving towards self-regulation and self-monitoring, and I think we'll see that to some degree here.

**Mr Agostino:** I think we've seen it already.

**Mr De Angelis:** I believe there's still a control function that is required.

**The Chair:** Thank you very much.

Colleagues, that's our last presenter of the morning. I'd just like your indulgence for one moment. Yesterday we had a presentation by a fellow by the name of Tony Formo, who indicated that, and I quote, he "worked as a research officer at Queen's Park." I think some of us may have misunderstood that he perhaps was a member of the legislative research staff here at Queen's Park. The staff wanted to indicate to me that this gentleman was not part of the staff here. I think it's important to note this because we all rely on the legislative staff for non-partisan information from time to time. I thought we should all be aware of that.

**Mr Galt:** So who did he work for?

**The Chair:** It's not clear, but it wasn't part of the legislative research staff here in the Legislature.

**Mr Galt:** One of the parties?

**The Chair:** Possibly one of the parties, yes. Possibly. This committee stands recessed until 1:30 this afternoon.

*The committee recessed from 1217 to 1336.*

**The Chair:** Good afternoon, everyone. I call to order the afternoon hearings of the third day for Bill 107, An Act to enact the Municipal Water and Sewage Transfer Act, 1997 and to amend other Acts with respect to water and sewage.

**Ms Churley:** Madam Chair, before we begin, just very briefly, there have been a number of questions asked and perhaps you or somebody else here might be able to help, because I don't know the answer. There's a question around how committees are chosen to be televised and who makes that decision and I'm unable to tell them. I know that some people here are asking that question. It's just something that I don't know the answer to and perhaps you do.

**The Chair:** I don't know the answer, myself. I refer to the clerk. Can you tell us?

**Clerk Pro Tem (Ms Donna Bryce):** Each standing committee is assigned a room. There are 11 standing committees. This committee has been assigned this room, 228. I believe actual value was assigned room 151.

**Ms Churley:** The Amethyst Room.

**Clerk Pro Tem:** That's right.

**Ms Churley:** What committee is that coming under?

**Clerk Pro Tem:** Finance and economic affairs, I believe.

**Ms Churley:** But that's not their regular room. That's why I ask, because that's usually community and social services, whatever that area is.

**Clerk Pro Tem:** During the recess the rooms were assigned again.

**Ms Churley:** Who does the assigning?

**Clerk Pro Tem:** The Clerk's office.

**Ms Churley:** How are the decisions made? Of course AVA is very important and there are a lot of important bills, but there are concerns expressed about how important this is and it isn't being televised.

**Clerk Pro Tem:** I think there are probably a number of things. As you just said, the matter of public interest



might be taken into consideration; if French translation is required. There are a whole number of issues surrounding the decisions.

**Ms Churley:** One final question: Yesterday, the other committee in the Amethyst Room, AVA, ended early and we were still going on. Is there any reason why, if one committee ends early, they can't then just pick up the proceedings from another committee?

**Clerk Pro Tem:** I think the logistics. It's just very difficult for a committee to pick up and move.

**Ms Churley:** We'd actually have to move into that room?

**Clerk Pro Tem:** Exactly.

**Ms Churley:** I see. Okay, thanks for your help. That clarifies it.

#### CANADIAN INSTITUTE FOR ENVIRONMENTAL LAW AND POLICY

**The Chair:** We'll begin this afternoon with our first presenters, Mark Winfield and Anne Mitchell from the Canadian Institute for Environmental Law and Policy. Good afternoon and welcome.

**Ms Anne Mitchell:** Thank you, Madam Chair. Good afternoon to you and to members of the committee. Thank you very much for the opportunity to meet with you today. I also have with me Dr Mark Winfield, who is our director of research at CIELAP and who has prepared the brief that you have before you. I'm the executive director of the organization.

A little bit about CIELAP: It was formed in 1970 because of the continuing need for objective analyses of environmental law and policy issues. We feel there's clearly still that need. We are independent of both government and industry. We're a national, not-for-profit, charitable research and educational institute committed to reforming law and public policy.

We're concerned about the fact that presenters before your committee on this bill have only had 15 minutes. We won't take up time being concerned about that, but I hope you somehow or other have a mechanism to digest all of the information that you've received and are able to give it the time that is needed to make good decisions.

We can't support this bill as it stands. It fails to address, in our view, the real environmental and public health problems which are presented by the province's deteriorating municipal water infrastructure. The Provincial Auditor, the Environmental Commissioner for Ontario, the Commission on Planning and Development Reform and the Ministry of Environment and Energy itself have identified serious problems with Ontario's sewer and water infrastructure and the operation of septic systems in the province.

These key problems include the lack of effective controls on industrial discharges into municipal sewer systems. It's estimated that industries release between 350,000 and one million tonnes of hazardous and liquid industrial wastes into municipal sewer systems each year. Another problem is the continuing failure of sewage treatment plants to meet provincial effluent guidelines, and this is largely due to aging facilities. In a 1991 review, 91 of the province's 415 facilities were not in

compliance, and eight out of 10 of the worst were Ministry of Environment and Energy owned and operated.

Another problem is the increasingly outdated and inadequate standards for drinking water. Another one is the vulnerability of many water plants to bacterial contamination due to the lack of adequate filtration facilities and the growing problems of bacterial contamination of surface and groundwaters due to the malfunctioning septic systems.

It's our view that this bill does not address any of these problems, but rather, the bill's implementation could make them worse. It could, in fact, offload aging water and sewage plants on to municipal governments while the province withdraws financial support for their maintenance and it could open the door to the privatization of sewer and water infrastructure. As we know, this has led to serious public health problems, water shortages and the cutting off of water supplies to low-income families in England, where in fact this has happened.

Similarly, the responsibility for the regulation of septic systems is to be transferred to municipalities with no indication of how they are to finance this function.

These are some of our concerns. We are willing and prepared to entertain questions, and as I say, Dr Mark Winfield, who prepared this paper for us, will be open to answering questions.

I do want to indicate, though, although we have said that we cannot accept this bill as it stands, we are prepared to work with your government on environmental law and policy issues and we have indicated this to Mrs Elliott, Mr Galt and Mr Sterling at various times in the course of your government. Thank you.

**The Chair:** Thank you very much. We have 10 minutes remaining, three minutes per caucus, and we'll begin with the government caucus.

**Mr Galt:** Thanks for your presentation and for your input in the past, particularly with reg reform. We have worked together and I appreciate the input that your organization has given.

I'm curious. This article that you have attached refers to "Septic Systems: The Sleeping Giant." Just glancing at it, and I haven't had a chance to really work my way through it, maybe you can just highlight it a little bit for me, whichever one of you is the most familiar with this particular article and the concerns that they're expressing in here and whether or not this relates to the Ontario situation.

**Dr Mark Winfield:** Yes, it relates very directly. The excerpt is from this book here, *Toxic Time Bombs* by John Swaigen. What the excerpt does is explain some of the environmental problems in Ontario and public health problems that have been identified with septic systems. A couple of things that it highlights is that there are about a million septic systems operating in the province. The Ministry of Environment and Energy has estimated that about 30% of them are malfunctioning, and that's leading to quite serious contamination of surface and groundwater. It also notes that there are a number of situations in which septic systems are being used inappropriately in the province, particularly in cottage country, and again that's leading to contamination of surface and ground-

waters. That was something the ministry confirmed in the state of the environment report that was released in January. It highlighted septic systems and the problems in cottage country.

It's there just as a backgrounder, as an impression of the kinds of problems that are there. These are things that the Commission on Planning and Development Reform highlighted in its report a couple of years ago as well.

As I say, our concern with the bill is it simply offloads the responsibility for the regulation of these systems on to municipalities. It doesn't provide any indication of how they are actually supposed to try and deal with this new responsibility or how they are to finance these functions, and in the case of the ministry, where there's no municipal organization, it offloads these functions on to the Ministry of Municipal Affairs. Again, that causes us a lot of concern, one, because the Ministry of Municipal Affairs has no experience in this kind of environmental and public health regulation, and secondly, because there appears to be no indication of any intention to transfer resources from the Ministry of Environment to municipal affairs to deal with these new regulatory responsibilities.

**Mr O'Toole:** Thank you for your presentation. I am familiar with a previous presentation that you've made, or I've read, but I just want to come back to the fundamental question I've asked most members. Today's methodology of financing the capital for water and waste water treatment is changing, and I think it's a case of who we're borrowing the money from. Do you think that the full-cost recovery is the best way to maintain both sustainability and conservation issues where the user is fully accountable? Of course there would be subsidies for those that have differentiation of income and various economic factors, but fundamentally, once that's been addressed, do you see any reason to have full-cost recovery in whatever, a public or private sector monopoly? Because that's what you're going to end up with either way.

**Ms Mitchell:** I think we've certainly argued for full-cost recovery. The question of what happens to the most vulnerable is a problem and is a question.

**Mr O'Toole:** It's an important issue.

**Ms Mitchell:** But the whole issue of progressive taxation is also an issue and somehow or other they've got to be dealt with together.

**Mr O'Toole:** That's sort of like Bill 106. You're talking about fair tax, progressive, like Bill 106.

**Ms Mitchell:** Yes, progressive and fair taxation.

**Mr O'Toole:** That's the new municipal assessment. There's a lot going on.

**Dr Winfield:** In the brief we've made clear that we support the full-cost internalization of new sewer and water infrastructures to support new urban growth because, in effect, otherwise you're subsidizing urban sprawl.

One of the concerns that we're raising with the bill, though, is that there's potentially a very dangerous combination of things here. If, on the one hand, you're going to withdraw the provincial financing for that kind of infrastructure at the same time as you're giving municipalities the power to approve septic systems, you

present a very dangerous temptation to municipalities to approve new development on septic systems rather than sewer systems, and the Commission on Planning and Development Reform and others have pointed to some very serious problems.

**Mr O'Toole:** I just want to question that, if I may. The province should have the standards —

**The Chair:** Excuse me. I'm sorry to interrupt, but we should go to the Liberal caucus.

**Mr Agostino:** Thank you, Madam Chair. There are two points I want to touch upon. First of all, there's this ongoing concept on the government side about this obsession with full-cost recovery. I think we've got to differentiate the difference between full-cost recovery in services the government provides that are optional and that people can do without and full-cost recovery in essential services.

You can stretch this argument to suggest that we should do full-cost recovery for health care, for hospitals, so if someone goes in and they get sick, then when they walk out they should be handed a \$100,000 bill. That would be the concept of full-cost recovery for an essential service. You can do the same thing with transportation and maybe charge \$10 a ride on a bus if you wanted to go to full-cost recovery.

You can take that extreme to essential services, and obviously it would be a very unworkable system where you end up with the wealthy having access and the rest of Ontario being shunted aside and sort of falling off to the way and making it on their own if they can. This whole concept of full-cost recovery, although it sounds great, in my view doesn't fit this argument when you're talking about essential service such as water.

It leads into a privatization question, and it's something I guess you've talked about here. This bill leaves the door completely open, of course, to private companies walking in at the option of the municipality, buying the whole package, buying the infrastructure, the land, the services, and then charging whatever they feel like charging for those services. Again, if you're in the upper echelon and make lots of bucks, you probably won't even notice the difference. If you're an average working Ontarian who's middle to low income, you're going to notice a difference.

In your view, is there a danger with this movement? Is there a danger in the whole concept of full-cost recovery as you tie it in to the privatization of water and that potential with this bill?

1350

**Ms Mitchell:** I guess if we had a progressive and fair taxation system, that may be the best way. I think one of the factors with a full-cost recovery system, at least the argument is that there won't be so much wastage.

**Dr Winfield:** I think one needs to be very careful about this. Clearly, the allegedly full-cost recovery system put in place in England in terms of sewer and water privatization produced enormous social impacts in terms of impacts on low-income families. In fact, it's been clearly a public health disaster to boot.

I think that we need to differentiate. There are some very core basic public services which need to be provided by government. Sewer and water is part of that. The only



place, really, where we've indicated there may be a place for some cost recovery attempts here is when you're talking about expansions of new infrastructure to support new development, but where you're talking the need to maintain existing services and that kind of thing, clearly there's a very powerful case to be made for an approach that involves the involvement of the government. In fact, you have to remember that one of the reasons the province originally got into the financing of sewer and water infrastructure in the 1950s was precisely because municipalities couldn't afford to provide these essential services on their own. That was essential to the creation of the water resources commission in the 1950s.

**Ms Churley:** I think it's relevant to this presentation for me to point out that, of course, groundwater contamination due to abandoned oil wells is well documented, and this government has deregulated petroleum resource activities through amendments to the Petroleum Resources Act, so in fact this government has made it easier now for petroleum to leak into our groundwater. I just wanted to point that out as we proceed.

I must say I was slightly alarmed when I saw LUST, leaking underground sewage tanks, here, but not for the reason that the acronym is LUST. When I was the Minister of Consumer and Commercial Relations, through the urging, to put it mildly, of John Swaigen, the author of this, my ministry brought in some of the toughest leaking underground storage regulations for petroleum. The reason why I was alarmed is because I don't think this government has discovered that one yet to deregulate and I was afraid that if we bring it to the surface that will be next to go.

Anyway, I wanted to ask you — and I will carefully read your document because I really trust your expertise in this area. There are government members, including the minister and the parliamentary assistant, who say that what happened in England cannot happen here under this bill. If you read Hansard from England, Thatcher and ministers said the same thing. But we're very worried about not just the privatization of the operation but of the actual plant and water and therefore the rate setting itself. I want your opinion as to whether or not you think this bill the way it's written now could actually lead to that same kind of privatization that's happened in England.

**Dr Winfield:** I want to touch on your comment about underground storage tanks, because the government has in fact introduced a remarkable scheme around underground storage tanks through Bill 66.

**Ms Churley:** Not mine.

**Dr Winfield:** No, the previous government. I'm sorry, yes, the previous government did. The current government has and in fact is transferring those regulatory responsibilities to something called a technical standards and safety authority, which I can't even describe in terms of institutional taxonomy as to what it is. We're actually getting legal opinions developed on the agreement between this authority and the Ministry of Consumer and Commercial Relations to try and figure out what exactly it means and what is going on.

In terms of this bill and the issue of privatization, it's quite clear that the bill's wording makes it very clear that municipalities are free to transfer the property of the

Ontario Clean Water Agency to anybody once they've received ownership of it. There are no constraints of any sort at all in terms of what they can do with the capital infrastructure or its operation once it's been transferred to them. There appears to be no constraint at all.

**Ms Churley:** So you would recommend strongly that if the government really means what it says, then they would take heart and immediately say they're going to amend that section of the bill to make it very clear that can't happen.

**Dr Winfield:** Yes. The minister and the parliamentary secretary have said on the public record that the clauses about the return of loans to the province, which may have financed infrastructure in the past, are intended as a disincentive to privatization.

**Ms Churley:** It's the cost of doing business.

**Dr Winfield:** Yes. I think our view would be, if that's the government's intent, to discourage the privatization of this infrastructure once it's transferred, then the bill should be amended simply to make that clear and to say that privatization of the infrastructure is not an option once it's been transferred. If that's the government's intent, and that's what the minister and the parliamentary secretary have indicated they're trying to discourage, then they should make it clear in the bill that's what they intend to do.

**The Chair:** Thank you very much for your presentation this afternoon. On behalf of the members of the committee, we thank you for taking the time to come today.

Our next presenter is Ann Landrey from the Native Canadian Centre of Toronto.

**Ms Ann Landrey:** Madam Chair, we're awaiting one member of the group. Mr Chisholm, who is next on your committee's list, has agreed to stand in my place, to stand down once, if that's agreeable to the committee.

**The Chair:** Yes, that will be fine.

#### CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 79

**The Chair:** Welcome, Mr Chisholm, representing CUPE Local 79. You have 15 minutes for your presentation. That includes your presentation and questioning.

**Mr Jim Chisholm:** My name is Jim Chisholm. I'm the chair of CUPE Local 79's environment committee. CUPE Local 79 represents approximately 9,000 members who work in the city of Toronto, Metro Toronto and Riverdale Hospital.

Our big concern with Bill 107 is that we feel there is a very significant possibility and in fact likelihood that it's going to lead to the privatization of water filtration plants and sewage treatment plants.

Municipalities are going to be faced with the question, after a year, of whether to allow OCWA, the Ontario Clean Water Agency, to continue operating plants that are presently operated by OCWA, or to perhaps submit the operation of the plant to competitive bids. Given that municipalities are under an economic crunch, that there is little or no money available in the municipal assistance program, and given that many of the privatizers are probably willing to offer significant sums of money for

this type of operation, even if there is a penalty outlined in the bill that they have to repay the government for expenditures that were made going back to April 1, 1978, it is our feeling that is likely.

In fact, right now, today, we see the privatizers, large companies from Europe and Canada, right here in this province. Some of them have set up operations in Toronto and they are hammering at the doors of the municipalities. We know that Metro Toronto has been visited, asking if they are interested in privatizing their water and sewage treatment plants. At this point, Metro Toronto has said, "No, we're not that interested," although it's in the background. Other municipalities like the region of York, the region of Peel, the region of Waterloo and Haldimand-Norfolk have also been approached. From what I read, they are looking seriously at that option.

Privatization at the best of times is a bad thing. Presently the water supply throughout the province is of a high quality and it's partly at a high quality because it's not produced at a profit. The end objective is not to produce a profit for the companies but to produce a high quality for the receivers of that water, both industry and residents. It is cheap, by and large, and it's reliable. It's almost unheard of to hear that the water supply has been cut off. I'm sure you must have heard in the last few days that in fact that was a reality in Britain after privatization. The reliability of the water could no longer be assured.

From our point of view, it makes absolutely no sense to allow those operations that are so key and vital to the health of the people in Ontario and to the industries of Ontario to be privatized. At the best of times, it would be a bad thing.

In Ontario, this would be occurring essentially in an unregulated environment. For example, if the privatizers took over sewage treatment plants, there is no sewage treatment plant regulation in Ontario. There simply is not one at this point.

1400

Who's going to control these operations? Who's going to tell the operator what quality he operates at if there's no regulation? One of the few areas the Ministry of Environment has indicated a regulation will come down is in the area of sewage treatment plants. So, in fact, we may actually see a regulation of sewage treatment plants.

I did have the opportunity and pleasure of sitting on a committee that the ministry had set up dealing with sewage treatment plants called the joint technical committee. Essentially, I was helping to draft that regulation, so I have some idea of what may be in that regulation.

It's likely to cover the most basic parameters of biochemical oxygen demand, suspended solids, phosphorous, bacteria and, if we're lucky, it may cover acute toxicity. Almost certainly, that regulation will not cover metals, it will not cover toxic organics such as DDT, endocrine-disrupting chemicals like nonylphenols and almost certainly will not cover sewage sludge. At the best of times, that's not a good situation.

In my opinion, even the municipalities should have to look at these items, monitor them and so on. But here we have a private operator who will — again, the objective

is not necessarily to produce good water in the treatment plant or in the filtration plant for the residents. The objective is to produce profits.

Just to give you a small example of what may happen, a typical chemical used in a sewage treatment plant is ferrous chloride. Ferrous chloride is used to precipitate phosphorous. Typically, that particular chemical is usually purchased as a byproduct of an industrial process, so as a result of that, it's very important to watch the quality of the ferrous chloride as some processes, of course, introduce contaminants like chromium and so on. It's very important to make sure your ferrous chloride is in fact ferrous chloride and doesn't have chromium, mercury and other contaminants.

Money, of course, is spent to do that, to analyse and so on, and the higher-quality chemical, of course, costs more. For a private operator having to select between a pure ferrous chloride and a ferrous chloride that has contaminants such as chromium and mercury etc, what one are they likely to choose if the second one is cheaper?

You may say they're going to be responsible and select the first one. I am not so confident, especially considering there is no regulation at this moment that regulates it and the regulation that will be brought in is not going to cover it. My prediction is that they would select the second grade ferrous chloride and chemicals like chromium, mercury and so on would in fact be introduced by them through that contamination of ferrous chloride into the treatment process. That's just one example. There are many other examples I could have given to illustrate that, in my opinion, private operators will not run plants of the same quality as a public operator.

The public operator, if we have some problems with it — and I've done this myself. I've gone to committee meetings in Metro and said, "Listen, you should be looking at nonylphenols in sewage sludge. We have to be really concerned about that," and they listen. If we, as citizens, have concern that private operators are using for example ferrous chloride that's contaminated with chromium, what outlet will we have, especially considering there's no regulation dealing with it and the regulation coming down will not cover it?

Another consideration that I think is very important is to look at the impact on sewer use. Presently, to give you Metro Toronto, for example, sewer use questions are controlled by Metro Toronto, of course. They have enforcement people who go out to the industries to check to make sure the discharges are within Metro's bylaw, which is based on a provincial model sewer use bylaw.

What do you think is going to happen if the sewage treatment plant is operated by a private operator? The impetus now for the municipalities to check and regulate sewer discharge is that many of them run the sewage treatment plants like Metro Toronto, and it's in their interest to go to the industries and make sure that the industries are within their bylaws and that the municipality even has a bylaw, keeping in mind that in Ontario, again, there's no regulation for sewer use. There's no requirement in Ontario for municipalities to have a sewer use bylaw. In fact, the majority of municipalities in Ontario do not have a sewer use bylaw; it's only the larger ones that do.



If you don't have that reason for a municipality to look at sewer use because they're not worried about the sewage treatment plants any more, they're run by a private operator and all of a sudden, it's their concern, not the municipality's concern, number one, it's possible they may not even have a sewer use bylaw. Why would they? There's no real need to. If they do, why would they enforce it, or why would they enforce it to the level they are doing now? The reason primarily that sewer use bylaws are enforced now is to protect the sewage treatment plant. That reason would be removed if privatization were to happen. It would make no sense to have the privatizer operating the plant and the municipality separate and apart from that municipality enforcing the bylaw to protect that plant. There's just not a fit. In fact, it would be logical that a private operator take over enforcement too. That would be the logical extension of it, which I'm sure none of us would support, or at least I would hope.

There are other things that happen in a sewage treatment plant that are absolutely vital, in my opinion. At the best of times, if it was well regulated I'd have serious concerns about a private operator taking over these responsibilities.

But this is happening in a context in Ontario. The sewage treatment plant operations and sludges and so on are operating in an unregulated environment. There is no regulation dealing, for example, with sewage sludge. Treatment plants generate a sewage sludge, and the worst of the chemicals, the biocumulative chemicals, the persistent chemicals and the toxic chemicals — I've studied this — will end up in the sludge. That is an environmental fate of the worst of the chemicals: It ends up in the sludge.

What do we do with the sludge? The only guidance that is given in Ontario in terms of sludge is when it goes on agricultural land, otherwise there is no guidance, and it happens to be that book right there. It's called A Guideline for Sewage Sludge Utilization on Agricultural Land. "Guideline" is the key word; it's not a regulation.

But even in the framework of the guideline, if you look through it to see, "What does it have to say about pesticides? What does it have to say about DDT? What does it have to say about endocrine-disrupting chemicals like nonylphenols and thallates and so on?" you'll find they're not covered. Toxic organics are not covered in the guideline, which gives me concern even when it's operated publicly. We've raised, and I have raised personally, these issues with Metro in other areas.

It will be an absolute nightmare to imagine this in the circumstance of a private operator who generates a sludge. Perhaps it's incinerated now like in Hamilton, which costs a lot of money, and that operator is going to want to stop incinerating that because it costs money, and the objective again is to make money.

In fact, in Hamilton they've stopped incinerating. They haven't put it on agricultural land yet, to my knowledge, but they're putting it in landfill sites. The step after that, as soon as they reduce the metal — the only thing stopping them as far as I know at this point is metal levels. That's one thing that is covered.

Once those metal levels come down sufficiently, then an operator like the one in Hamilton, which is a contract

operation by Philip, potentially will be able to put that on agricultural land and we won't even know what DDTs are there, what PCBs are there, what endocrine-disrupting chemicals are there because there is no requirement in this guideline even for monitoring. If we did know, if they did monitor it and we found that it's full of DDTs, dioxins and so on, there's nothing in this guideline to stop them from putting it on agricultural land.

The implications are incredible when you think of it: crops growing on sludge where the quality is virtually unregulated. Do we want to entrust this to private operators? I do not think so.

**The Chair:** You have one minute left.

**Mr Chisholm:** Really? My God, I'm only halfway through, but I'll summarize very quickly.

In the interests of the public and industries Metro Toronto did a survey that indicated two thirds of industries do not want privatization; they want it publicly run. Two thirds of industries in the Metro Toronto area, when surveyed by Metro Toronto last year, said they want it in the public sector, and surveys of the public indicated time and time again that they want it in the public sector as well.

It's not in the public's interest and it is not in industry's interest to allow privatization. You must include an amendment in this bill to prevent privatization at the municipal level. At the very least you must reintroduce the plebiscite that was eliminated by Bill 26, the omnibus bill, that required a plebiscite if municipalities were considering privatizing their utilities. At the very least you must do that. Thank you.

**The Chair:** Mr Chisholm, thank you very much for taking the time to come this afternoon. We appreciate your advice. You can leave your brief with the clerk.

1410

#### NATIVE CANADIAN CENTRE OF TORONTO

**The Chair:** Ms Landrey, are you able to come forward now?

**Ms Landrey:** Yes. Our party has arrived.

**The Chair:** Welcome. Please introduce your colleagues for the record.

**Ms Landrey:** Madam Chair, members of the committee, my name is Ann Landrey. I am here this afternoon to introduce three Anishnawbekwe first nations women who will be addressing the committee. Their names are Pauline Shirt, Tara Chadwick and Diane Pugen. Ms Shirt is a mother and grandmother, an elder and teacher and a masters student at York University. Ms Chadwick as well is a university student. Ms Pugen is on the faculty of the Ontario College of Art and Design.

You will hear much during these depositions of competing interests: Should water and sewer utilities be public or private? How much regulation is necessary? Who will preserve our water resources for future generations? In these discussions one voice is missing, and that is the voice of the water itself. The water has a lot to say on these issues. It has always spoken and it is time for you to listen to what it has to say.

**Ms Pauline Shirt:** First of all I'd like to say bonjour to everybody. I am of the bird clan. My name, Nimki-

Kwe, means Thunder Woman in Ojibway. I have been a resident of Toronto since 1969 and I am of the Cree nation.

First of all I'd like to give my greetings to the committee and to the presenters and also greetings and thank you and meegwetch to my helpers coming in here to help me as a grandmother. As grandmothers in our communities we have helpers. We are the teachers and our helpers carry our words.

Today I'd like to say something that's very important and very sacred to us: water. In our tradition it is the woman who is the carrier, the caretaker and the teacher for water. To us, water is very sacred. I have brought a water vessel here. It symbolizes the upkeep that we as women have in our tradition. In our culture, traditionally water cannot be owned. We say that our mother is an entity, she is alive, she has all the properties of our bodies, of everything. In her lodge, in her body she carries what we call the blood, her lifeblood, which is the water. The water purifies her, nurtures us and helps heal our bodies. In our tradition the woman, who is the caretaker, carries this teaching to all. It has been our teaching since the time we have been here.

As a recap to you I would like to read an understanding, a treaty that is called a two-row wampum belt, and I would like to read it out to you here. I will explain what it is for those of you who have never heard of it. This teaching is between the Iroquois and the earliest white settlers. This belt symbolizes the agreement and conditions under which the Iroquois welcomed the Europeans to this land:

"You say that you are our father and I am your son. We say this will not be like father and son but as brothers, as equals. The two rows on this belt will symbolize the paths of two boats on the same river. One path is for the white people, their laws, customs and their ways. The other path will be for the Iroquois and their laws, customs and way of life. We shall travel side by side but in our own boats. Neither of us will try to steer the other's vessel or make laws or interfere in the internal affairs of the other."

The Anishnawbe people of this land have followed that. What it really says is that our other equals have dishonoured that. It is the water which binds us together. I am not here to give you a guilt trip or anything like that. I am here for you to recap and go back to that understanding, to the agreement that we do not own the water. We're all in this together. We have to share everything together. That is a teaching in our way: the sharing of everything in here.

We do not own Mother Earth. We cannot own her. She is your mother too and she is my mother. She takes care of us. She takes care of your children. She takes care of your grandchildren. As a grandmother that is what is so important in my heart, that teaching of the water, how precious and how important it is for us, for the survival of the human race. We have to be together in this circle of life. We have to maintain that circle concept of learning and being together as one. We have to do that in order for us to survive as people.

I would like to tell this committee that we are prepared, as Anishnawbe people, to re-educate not only you

but ourselves too to come into this together and help each other understand the true meaning of water because water is an entity. That water has a voice, that water has a spirit and we cannot own her.

I'd just like to say meegwetch for listening to me and for opening up your ears to that teaching. It's a very simple teaching but it's also very important. I say meegwetch, and we have songs that speak to the spirit of the water. My helpers will sing that song. Songs are part of our teachings. Songs are part of our way of communicating and understanding each other.

**Ms Tara Chadwick:** We're going to sing this water song. I'm not going to sing it into the microphone, sorry. It's a ceremonial song. I'm just learning it, so I'll sing it the best way I can. It talks about this water. It's a song that was given to us and it talks about that beautiful, shining water. It talks about the life of that water. While I sing I'm going to close my eyes because it's easier for me to focus on the spirit if I close my eyes. So I invite you to really listen. For me it's easier to really listen if my eyes are closed. Other people keep their eyes open. I just invite you to do that.

*Musical extract.*

**Ms Shirt:** I'd like to say meegwetch for listening to us and listening to our voices.

**The Chair:** Thank you very much.

1420

#### PROFESSIONAL SERVICES GROUP, CANADA

**The Chair:** We'd now like to call Mr Sanderson to come forward, please. Welcome, Mr Sanderson.

**Mr Mark Sanderson:** Good afternoon. Madam Chair and members of the committee, I'd like to thank you for allowing me the opportunity to speak to you today. My name is Mark Sanderson and I'm vice-president of Professional Services Group, Canada, which is the largest contract operator of municipally owned water and waste water treatment facilities in North America.

I have purposely kept my remarks short today so that I could have time to answer questions and address issues that might be of interest and concern to you.

We support this bill because we believe it will provide an opportunity for us to provide services to municipalities that are interested in receiving them, and I put the emphasis on "interested in receiving them." It will be up to the municipalities to decide if we can provide a combination of services and value that is to the benefit of their citizens.

Companies such as ours can bring considerable expertise to our clients that might otherwise not be available, or at least not in a cost-competitive fashion. There have been numerous references lately to the fact that the private sector will compromise service levels and raise water rates as a result of this bill. The track record of our industry does not support these statements. First, we do not set water rates. We're talking about privatization very loosely in the context that I'm hearing it. We're suggesting that privatization always means "private ownership," and that's not the case.

We operate municipally owned water and waste water plants. We do it cheaper and better, which results in them



being able to lower their water rates. We do not have control over the rates. We are able to lower operating costs while maintaining and improving service levels, which allows them to reduce the rates. There are numerous benefits that the private sector can bring to the operation, maintenance and management of municipally owned treatment plants, and I'd like to draw attention to just a few.

(1) The competitive process. The way our industry works is that a competitive procurement process is entered into by the municipality which sets out terms and conditions, scope of services that we as private operators propose. This is very much in the control of the municipality and they determine what the levels are. We are controlled through contracts relating to effluent performance and maintenance performance, resulting in the health and safety of the citizens we are working for being protected.

We've seen municipalities that have had savings as high as 40%. Typically they're in a range of 10% to 20%. A previous speaker mentioned that industry in Metro Toronto was not in favour of private operations. Last year a competitive assessment was done that showed that \$50 million per year could have been saved in the water and waste water budget if private operators were running the plants. I wondered, if you rephrased the question and said, "If private operators were to save that kind of money and that would be reflected in your water and sewer bill with no reduction in service levels, would you favour it?" if you might get a different answer.

(2) We bring considerable expertise that is a result of the experience we have, and this is a direct benefit in terms of service levels and cost to municipalities.

(3) Our track record. Much has been said about the British privatization experience. That's not the model that I think is being considered in Ontario by municipalities, or in North America. I don't know of any municipalities that are interested in selling their water or waste water assets, or selling their water, for that matter. Many of them are considering private operations of facilities they own.

This is what we do. We operate and manage water and sewage plants. Sure, we have a profit motive, but we have a much different motive from that. We're responsible people. We live in the communities we work in. We drink the water we treat and we use the sewage systems we work in. It's not in our short- or long-term interest to provide a service that is not the best it can be — in fact, that's how we differentiate ourselves — or that's not a good value for the citizens we're working for.

Finally, in the contract operations industry or the selection of private operators to run municipal infrastructure, there's considerable expertise and experience and a proven track record of procuring these services that address all the risks and concerns I've been hearing today. Our contracts are very onerous in terms of our performance requirements and our liabilities and the guarantees and bonding that we have to provide associated with them.

I'd like to thank you for your attention. I'll restrict my comments to what I've said and hopefully I could answer some questions.

**The Chair:** Thank you very much. You've given us about three minutes per caucus.

**1430**

**Ms Churley:** Thank you very much for your presentation.

You must understand that the British experience, as you are well aware, is a nightmare. I think you'd agree that it went very wrong.

**Mr Sanderson:** No, I wouldn't.

**Ms Churley:** You wouldn't agree with that?

**Mr Sanderson:** No. You have to understand that the whole purpose of what Britain did was that they were entering into the European Community. They had, as a government, not invested in infrastructure properly that would have allowed them to meet their European directorate requirements for drinking water quality and standards and waste water treatment. As a result the Water Act created an onus on the private sector to make up that £40 billion of infrastructure investment. I've seen all this.

**Ms Churley:** There's documented evidence even in all the more right-wing papers that —

**Mr Sanderson:** The Toronto Star.

**Ms Churley:** No, no. This is from Britain, and I have Hansards as well: "Profiteering Claims Mark British Privatization." If you read through, there's absolutely no doubt about it. I'm not saying this would be the case with you, but I'm a little shocked to hear you say that Britain was not — we all know it was a disaster. The companies made huge pots of money and did not reinvest in the infrastructure. There were serious leakage problems, droughts, all kinds of problems and huge profits were made. Poor children were getting their water cut off. This is absolutely documented evidence.

**Mr Sanderson:** I'm not endorsing the British model. I did say that I do not think it applies at all to what's being contemplated in Ontario. I know of no community that's thinking of doing anything like that, and we're not interested in doing that ourselves.

**Ms Churley:** I'm glad to hear that, but I was little afraid when you said you didn't think it was a nightmare there.

My second question is, if you feel strongly that this is not the model anticipated here — numerous people, experts in the field who've read the bill and studied it, have told us time and time again that the bill is not clear enough on that and that the government should amend it to make sure that kind of model doesn't happen because right now it's wide open enough where it could happen. Would you recommend to the government that they amend the bill to just absolutely rule out any kind of straight-out privatization of our water?

**Mr Sanderson:** No.

**Ms Churley:** Is my time up?

**The Chair:** Thirty seconds.

**Ms Churley:** There's no time to answer, I'm sure, but you're saying you would even support the British system of the privatization of our water.

**Mr Sanderson:** I didn't say that.

**Ms Churley:** Okay. Perhaps other people can pursue this.

**Mr O'Toole:** Very quickly, Mark, thank you very much for stating very categorically your position. It's my

understanding too that the nature of this bill is a very different starting point dealing with the issue of privatization, and I would refer you to section 56.2, which is part of what the minister said, that it's not the same position as Britain. We're starting from a different position on the globe.

I just want to be sure: You're familiar with the GO/CO option, government-owned and contractor-operated. That's really what you're espousing, not the capital side, the operating to the standards? Building in the efficiencies that these very specialized workforces deal, give me one example, if you could, Mark, of how you would achieve those efficiencies and be able to do it more efficiently and more effectively to very high standards than the public sector monopoly.

**Mr Sanderson:** I'll be very frank. There's an efficiency of labour. There's no sense mincing words. A lot of municipal plants are grossly overstaffed, and I don't apologize for that. That's not my fault.

**Mr O'Toole:** It's a monopoly too.

**Mr Sanderson:** It's not my fault.

**Mr O'Toole:** Okay.

**Mr Sanderson:** In the competitive environment we then have to enter into operating the plant the most efficiently. That also brings about opportunities for us to do electrical savings by operating equipment better. We believe that our maintenance practices lower maintenance costs and improve the operability of equipment. There are many different areas in which we can save municipalities money that have no detrimental impact, in fact a positive impact, on the operations and maintenance of the plants.

**Mr Bart Maves (Niagara Falls):** How many communities does your company serve? You said you're Canada-wide.

**Mr Sanderson:** Currently we don't operate any in Ontario, but we operate over 400 plants for about 250 clients.

**Mr Maves:** In Canada?

**Mr Sanderson:** No. There hasn't been an opportunity in Canada for companies, which is one of the reasons you do not have Canadian companies or a strong contingent of Canadian companies that can do this.

**Mr Maves:** So in the United States?

**Mr Sanderson:** In the United States.

**Mr Maves:** We've heard a lot of fears about quality assurances. You've already said there's a substantial improvement on costs to consumers. What kinds of quality comparators do you have?

**Mr Sanderson:** Our contracts are very onerous in terms of the effluent performance requirements we have, in terms of maintenance standards we have. You have to remember we don't do this unilaterally. We work with the municipality, and the municipality has a contract with us that they enforce and make sure everything is being done. They don't just walk away from the facility and let a private operator hand it over and then five years later come back and say, "How's it going?"

**Mr Maves:** Have there been very many examples of privately run systems, to your knowledge, that have had quality problems?

**Mr Sanderson:** We have to provide a performance bond, and I do not know of any performance bond in our industry that's ever been called.

**Mr Maves:** Ever in your industry?

**Mr Sanderson:** No.

**Mr Maves:** Thank you.

**Mr Sanderson:** That's to my knowledge. It just doesn't happen.

**Mr Agostino:** Just to start, where in the United States, which communities — just two or three examples — do you operate?

**Mr Sanderson:** We operate the whole system for the island of Puerto Rico, which resulted in a \$50-million annual saving for the island citizens; we do Oklahoma City, New Orleans, we do the Newark water system. We operate systems as small as an operating budget of \$50,000 a year to as much as \$93 million a year.

**Mr Agostino:** Just to follow an earlier — at the beginning I wasn't sure what you were saying. I think we have to distinguish, and I'm not sure if that was distinguished clearly enough. What I perceive to be the difference between privatizing the operation of the services and privatizing the service by selling the assets and controlling the rates is really what we're talking about here.

The system you advocate is that you would go into a contract with a municipality and your company would run the system. You'd have no control over rates and you'd have no ownership of the facilities.

**Mr Sanderson:** Correct.

**Mr Agostino:** That system already is in place in Canadian jurisdictions. It happens in my own community of Hamilton-Wentworth, which is substantially different from selling the package. The point I want to talk to you about is along those lines. You don't have any plants in Canada. Would you, though, agree that if your company bid for that kind of facility in an Ontario plant, you would be compelled and feel an obligation to honour existing contractual obligations, labour union agreements and bargaining units as part of that, or do you feel that as a company you have the right to come in and basically ignore what is there and set up your own folks and do what you like without honouring contracts and agreements that are in place with regard to labour negotiations?

**Mr Sanderson:** Our preference, and what we recommend to municipalities, is that they put protecting language in the RFP documents and in the contract to show how they want to look after their employees. Typically that includes protecting the current labour force, that they all get to keep their jobs, and if there are reductions, it's through attrition, that their comparable wage and benefits are received. That's up to the municipality. There are instances where the municipality says, "Sorry, but we can't do that," and then we're in a competitive situation. We just have to do what they dictate to us. But our position is to protect the employees. This is a hard enough business as it is to sell without going in and disrupting the whole community.

**Mr Agostino:** But do you not see the difference between the British situation, where it was a selling of the institution and controlling of the rates by private companies, and what you're doing? I found it bizarre that you would not see the difference between the two systems.

**The Chair:** No, we have to stop. I can't let you go on. Sorry.



**Mr Sanderson:** I perfectly see the difference. I just think there's been some very one-sided journalism on the British model.

**Mr Agostino:** So you think it's okay —

**The Chair:** Mr Sanderson, I have to interrupt. Sorry, Mr Agostino. I want to thank you for taking the time to come today. We appreciate your advice on the subject.

**Mr Sanderson:** Thank you very much.

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#### HUMBER HERITAGE COMMITTEE

**The Chair:** I'd like to welcome Madeleine McDowell, please, from the Humber Heritage Committee.

**Ms Madeleine McDowell:** I'm chair of the Humber Heritage Committee. We were formed about 12 years ago. We're made up of representatives of heritage and environmental groups such as the Toronto Field Naturalists, Black Creek Group, the Etobicoke Historical Society, York LACAC, Caledon LACAC, Kleinburg, King City. We have had representation from ARCH, Action to Restore a Clean Humber.

I've asked the clerk to distribute a brochure that we produced. We printed 30,000 of those. They're for use by school children — it was entirely prepared by volunteers — and they're in at least 300 schools in the watershed now, and we fund-raise to pay for the printing.

The Toronto, Cobecohenok, St Jean or, as it is now known, Humber River, has existed with its rise in the glacial deposits of the Oak Ridges moraine since the last ice age. Its entire watershed is filled with year-round streams, both surface and underground. It drops more than 1,000 feet in its 28-mile length. It is rife with human history, aboriginal sites predating the pyramids, French traders and priests, United Empire Loyalists and a succession of farmers, entrepreneurs and people.

It is a very beautiful river. We are pursuing its becoming a Canadian heritage river, like Lake Kluane, based on its natural beauty and tourism, its rise in the Oak Ridges moraine, a feature designated as a world significance by the United Nations, and its human history. It is linked with magical names like Étienne Brûlé, sieur de La Salle, Louis Hennepin, John Graves Simcoe, Wabbanossay, Peter Jones, Sir William Pearce Howland, who was the first Lieutenant Governor of Ontario, the Tyrrells and Elizabeth Arden, who was a Woodbridge girl.

The valley is still rebounding from the weight of the glacier. Because of its porosity and water table, it is a great aquifer. Because of its growing development, its watershed is now, for practical simplification of stormwater runoff and pollution control, being described also as a sewershed. The Humber as a nurturing environment has survived the great earthquake of 1663, the lumbering of the 19th century, the 100 or more mills which harnessed its power in the early development of the greater Toronto area as the industrial heartland of Canada. It now faces its greatest threat, the spread of urban development into its sources: the Oak Ridges moraine, the Niagara Escarpment and the fragile remaining wetlands areas. Wells are being dropped deeper because they run dry. This is the first alarm bell. Tributaries are being piped. Sewage infrastructure as it evolves must be rigidly controlled so that

stormwater runoff is clean at entry into watercourses and controlled so as not to exacerbate flooding.

Water consumption must not affect groundwater levels causing a drop of stream flow. The same steady flow which the Humber has always enjoyed must be maintained. Programs to restore water quality must be maintained and improved. The Humber watershed-sewershed typifies much of Ontario.

The need for water and air is basic to all life. The maintenance of the supply of water at a quality and quantity level, supportive of human health, is not appropriate for private responsibility. Ontario has the highest concentration of fresh water in the world. This is a blessing and a trust which can only be maintained by government. Water has a cycle which in nature regenerates and purifies it. When people are inserted into this cycle in large numbers, the regeneration and purification factors must be dealt with as insertions also.

The integrity of watersheds-sewersheds must be protected and maintained. This means groundwater levels, normal surface flow as in streams, lakes and rivers, and stormwater runoff. It also means water treatment both for drinking water and sewage. Waste water has several options, depending on locale, including small partially closed cycles with ongoing topping up of clean water.

Ontario has long recognized water pollution as both environmentally and life threatening. Water processing for drinking water and sewage is controlled and maintained by municipalities under provincial authority or directly by the province. It is paid for by public dollars and user fees, a closed circuit of moneys with no siphon, no profit and no abrogation or corruption of responsibility in the loop. The mere encouragement of public ownership of water and sewage infrastructure in Bill 107, as opposed to their support and maintenance, is dangerous to public wellbeing and environmental protection.

Brave heart is not always a strength in those who hold public office. They need bedrock at their feet and backs, the bedrock of our common agreements which we call law. Any weakness in water treatment and conservation is life-threatening to members of our population. Dysentery, poisoning or disease from going for a swim to drinking from the tap is not a scenario which we can afford to engage. Neither is environmental degradation, which is costly and frequently almost irrevocable, for remediation is not merely dollars but time in generations.

This government has made it very clear that the municipalities are creatures of the province. This being the case, the disentanglement of the province from its creatures is neither feasible nor common sense. The financial support of water infrastructure, both its development and renewal, is a function of all three levels of government in our Confederation, just as our human population is in symbiotic relationship with our environment.

According to some American investment analysts, utilities with their annual dividends are one of the better long-term investments. Ontario is not the United States. Our tax dollars are an investment hedging our future. There is an inexorable link in ownership between water resources, water table, streams, rivers and lakes, and water treatment, supply and potentially even demand such as export.

By not specifically maintaining public ownership of the treatment and infrastructure, this link is being ignored in the Water and Sewage Services Improvement Act. A broken link is a broken chain. The existing link must be kept and recognized with express provision for the retention of public ownership.

If privatization of water supply and treatment is to be permitted, as Bill 107 currently does, it must not be permitted in the absence of an ironclad public regulatory body dealing with both the prevention of environmental degradation and the maintenance of guaranteed safe drinking water and clean effluent at reasonable cost to users.

I read the brief submitted by the Canadian Environmental Law Association and the Great Lakes United and concur with all their recommendations. They are consistent with our own. I thank you for your kind attention.

**Mrs Julia Munro (Durham-York):** I think that from time to time all of us certainly need to be reminded in terms of a historical perspective on issues.

You alluded, perhaps, to this in the final statement you made in terms of your concurring with other submissions that have been made, but I just wanted to ask you if you were then ostensibly supporting the status quo. Do you see opportunity here for change or would you suggest that it is in our best interests to maintain the status quo?

**Ms McDowell:** Gee, that's very difficult. I would prefer something very similar to the status quo.

**Mrs Munro:** Okay.

**Ms McDowell:** There's always room for change. Change is growth, but the type of change is another whole matter. If the ownership of the resource and then the ownership of the processing of the resource are separated, then as I said, you've broken the chain and the ship can drift.

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**Mrs Munro:** Understanding that at this point it's 68% or 75% of water treatment —

**The Chair:** It's 75%.

**Mrs Munro:** — that's 75% of course municipally, I wondered if you had any comment to make in terms of change to the status quo.

**Ms McDowell:** Some of the municipal treatment facilities are very old and need upgrading. Certainly a great deal needs to be done in stormwater management and processing.

**Mr Agostino:** Thank you. I guess it's not a question of maintaining the status quo. I think people who made presentations today have indicated time and time again that it's not a question of what this legislation has but what this legislation doesn't have or doesn't exclude, and I think that's part of the point you were making earlier.

No one is opposed to change if we believe it's going to make it a better system, a more efficient system, but there's a significant difference, I believe, between saying municipalities — first of all I think the weakness in the argument that 25% of the gain is turned back is that often now there's not going to be any money available for infrastructure upgrading to allow municipalities and townships that are affected to be able to spend the money necessary to bring the facilities up to standard, which I think is a very serious flaw in what is happening.

It's the issue of privatization. I presume you would support or believe it would be in the best interests, based on what you've said, of the public and consumers if this government brought in an amendment to this legislation that would prohibit municipalities from selling off the assets in setting the water rate.

**Ms McDowell:** Absolutely.

**Mr Agostino:** You think that would protect consumers and the quality of the water?

**Ms McDowell:** That would help a lot.

**Mr Agostino:** Thank you.

**Mr Laughren:** I just wanted to alert you to what could happen, the potential here. The potential is to do exactly what you would like to see done: to move a very simple amendment that says, "If a municipality has ownership of a sewer and water system, it will not be privatized." It would not be a complicated amendment. It would take only one amendment, not 12,000, to make that happen.

The government in about 10 days, a couple of weeks, will be dealing with amendments on this bill. This is the last day of public hearings, then we move to clause-by-clause discussion as a committee. At that point the government has a choice. They can either move that amendment themselves and have the support of the opposition, because the opposition would like to support an amendment like that — we'd be enthusiastic about it.

**Mr Agostino:** Absolutely.

**Mr Laughren:** If the government does not do that, the opposition will move an amendment. I can't speak for Mr Agostino, but I don't think there's any doubt that his party and mine would move such an amendment.

At that point we'll see whether the government members really mean what they have been implying from time to time and the minister has been implying, and we'll support such an amendment.

I urge you to keep an eye on that process and come back here in a couple of weeks. It's an open meeting. It's scheduled now for April 30 in the afternoon, after question period. That could get changed, as I said, but you could keep in touch with us and just see how it unfolds.

Thank you for your presentation.

**The Chair:** Thank you very much. We appreciate your taking the time to come today.

#### COMMITTEE ON MONETARY AND ECONOMIC REFORM

**The Chair:** Ms White, please. Welcome. Please introduce yourself for Hansard.

**Ms Sydney White:** My name is Sydney White and I'm speaking as a member of the Committee on Monetary and Economic Reform.

This government acts as if it is doing the people a favour by allowing us to come here and speak in numbers that can only be described as token. The Tories particularly need to be reminded that the word "politics" comes from the Greek word "politikos" meaning "citizen." The citizen is the meaning and the end of politics and we deserve far, far better than the crude and shabby treatment that this government has inflicted on us. Witness today: We are virtually speaking incommunicado. If the



public knew what is happening here today — and 90% don't — they could be at the doors with pitchforks.

When Maggie Thatcher imposed her shopkeeper's mentality on England by confiscating publicly owned water and placing it on the market as a commodity, the people paid with their health. While Maggie's friends were hauling in \$5 million a year as the new CEOs of water, the yearly bill for water rose to \$2,000 and one third of the water was lost through leaky pipes. Some 21,000 households were disconnected because they couldn't afford the extortion. They went to public washrooms for their drinking water, bathing was minimal, toilets were seldom flushed. Dysentery rose 600%. Hepatitis rose 200%. All this happened in a period of six to eight years, by the way.

Regulations were ignored. In Devon, people were bedridden for weeks with cryptosporidium, and some died. Some 42,000 salmon were killed in the Trent River and the waste management was fined 16 cents per fish. While water was sold off to other countries, the people of England were told, "Cement over your gardens and dig out your trees to save water."

York region, north of Toronto, has already gone the private route, selling off to one of these same British utilities and Consumers' Gas. Pipelines are going to be sucking our water from Lake Simcoe and Lake Ontario. This plan can't even be sustained. We have to take care of our watershed instead of shipping it around the world. In the next century, water will be more valuable than oil. We must not allow our most precious resource to be stolen from Canadians by the same quisling government that sold us out in 1989. And recall that under NAFTA, Ontario's water, once diverted, would have to be perpetually supplied even if we do without.

The privateers say that user fees for water would conserve it, but they really want it priced to sell it. Some 76% of Canadians have stated that water should remain in public control. Unfortunately, the bankers' boys in our government have already shown their aversion to that same overwhelming number. Their lust to obtain all that we own is almost pornographic.

People, in shock and disbelief, ask daily: "How can institutions and utilities that we have paid for over half a century be confiscated and sold to privateers? The law says that before any public utility is touched, the public must agree to this in a referendum." That was true up until Bill 26.

Bill 26 removed the Public Utilities Act requirement that municipalities hold public referendums before selling any public utility. In short, a small group of greedy individuals with temporary powers have arbitrarily removed the people's right of consent or objection to the confiscation and sale of their property.

Thomas Jefferson has said, "Governments are instituted among men, deriving their just powers from the consent of the governed." It follows from this truth that by arbitrarily removing the public's right to be consulted and without our knowledge, the Harris government has compromised the principles of our Constitution and should be challenged. I say "without our knowledge" because corporate lawyers using doublespeak and altered concept definitions, as in the "Water and Sewage Services

Improvement Act," have obscured the fact that they were removing democratic and property rights.

We know that no election makes any group the automatic owner of public assets. This public property has been paid for by the people and created so that the people all have equal access to life support systems, of which water is primary. These utilities have been coveted by privateers for some time. Wiser governments in our past knew that public structures have been proven more efficient, safer and cheaper than any privatized, in every case. There is overwhelming evidence to back this up.

#### 1500

Businesses also prefer to locate in areas where there is a sound public structure, as it saves them thousands in benefits. So the Harris government's claim that privatization will make everything more efficient or safe — in the words of the kitchen, it's a crock. Added to this, they have ripped to shreds every law that would protect our environment. This public-private arrangement is a scam. There is no such thing as being a little privatized; it's like being a little pregnant.

What is the other pillar of sand on which the Harris group bases its lemminglike rush into the choppy seas of the free market? That we must tighten our belts. I have noticed that their belts are all on the last notch. They say that we have been living high and now we must pay the piper, the piper being the deficit. We all know what happens to those who follow the piper. We are not going there.

The deficit is beloved of the government and created by the government for the sole excuse of doing away with every social structure that we have so arduously built, and they want to make sure that no social responsibility will ever come back to claim its meagre 3% of the national military and usury budget.

We have a manipulated shortage. Since Mulroney, our government has followed the lead of George Bush, who really ran the Reagan government. I mean Ronny could have been in the first stages of Alzheimer's then; we don't know that. The US budget office has admitted that the sole intent of piling up federal debt was to provide a reason to cut social spending. Since Reagan's heyday, our government has also piled up the debt by giving huge tax breaks to corporations and wealthy individuals and draining billions from tax revenue.

At the same time, they choked off the charter of the Bank of Canada and went on the same anti-inflation crusade as the US fed, causing mass layoffs. The Bank of Canada was prevented from holding federal debt and the quisling government invited private banks to hold the debt at compound interest. As soon as we were heavily indebted, politicians claimed that it was our social programs that caused our financial crisis. This is the most criminal lie that has ever been inflicted on a long-suffering public.

The fact is that in 1972 when our social programs were at their peak, our gross per capita domestic product was around \$13,000. In 1995, it was \$20,000. We are almost twice as rich now but we are told that we cannot afford the same social programs nor can we afford any of our publicly funded utilities. In the meantime, 80,000 profitable corporations pay no tax and the rest pay a fraction

of the rate that working people are taxed. This phoney crisis has been engineered by a succession of corrupt governments in order to dismantle and wreck the public sector and sell off crown corporations at bargain prices to corporate predators.

The question we must all put to the government, both provincial and federal, is this: If we really have a deficit crisis and we must pay down the deficit as fast as possible, why are we giving huge tax breaks to the wealthiest families in the province and to corporations that are making enormous profits? If any one of us had a huge debt to pay, we would sensibly be hoarding every cent that we had to pay it as quickly as possible. We would not be giving our money away to some wealthy neighbour; that's not how you pay down a debt.

Both Chrétien and Harris usually answer that one with the tired delusion that wealth will trickle down and will make jobs. If that's the case, why don't we and Mexico have full employment? We certainly have enough concentrated wealth to not only produce a trickle down but a veritable Niagara Falls. What nonsense. It has been proven conclusively many times over that the sparrow following the horse is more likely to be dumped on and suffocated before he finds a grain of sustenance.

Crisis manufacturing is not a new manipulation. Kissinger brought this up first and it worked quite well for him, so now the lackeys of globalism are copying furiously by subsidizing the wealthy and the corporations and taxing the public into bankruptcy. That way much more property will come into the hands of the banks and of course the banks back the privateers. This is how they are surreptitiously robbing the public of every life-sustaining utility. Of these, water is primary.

Our right of consent has been stripped from us, and in some cases our very lives. People die unnoticed in understaffed hospitals while Rockefeller's HMOs are invited in. People are found dead in the morning snow. Thousands who have paid taxes all their lives are downsized and suddenly become welfare bums to be cast aside because they no longer have the holy job. All this supposedly to pay the deficit, which is mostly compound interest to the private banks. They are foreclosing on Ontario while the Bank of Canada is in chains. Truly we are witnessing a generation of vipers.

In Maggie Thatcher's national disaster area, the *Financial Times* crows that, "Following the British model, well over 100 countries have now adopted privatization as public policy." What an oxymoron and what an appropriate word. We know that in many of these countries objection was crushed by the corporate heel, thousands are jobless or working for medieval wages, protests are endemic and corporate murder, as is now being committed in the northern Chiapas, is rampant. The transfer of our water to privateers will also result in illness and death.

We are being robbed of our bread to be given a stone by the leaders of a corrupt monetary system. Charest has been on television with his plan on CD-ROM. The Liberals had their red book and the Conservatives promised that they would be revolting. In answer to that, I have a plan that would keep our money and our public institutions out of the hands of the speculating banks and the global casino:

(1) Tell Chrétien, Paul Martin and Gordon Thiessen to stop choking off the Bank of Canada and use the charter as it was meant to be used: to create employment and carry our debt. The Bank of Canada must also be responsible for at least 20% of the money creation and not the abysmal 2% to which it has been reduced. Right now, the Bank of Canada is not creating enough debt-free money to pay the interest on the debt.

The right will answer this by saying that the Bank of Canada cannot take back its previous portion of money creation because it will cause inflation. It will not cause inflation if the reserve requirement is reinstated. The very few countries that have no reserve in their central bank could be carpeted. This reserve is not a deposit to supply private banks with interest, as they are claiming, but a collateral deposit to prevent the banks from becoming speculators rather than bankers. Their judgements have already resulted in the loss of billions, and in 1991, their foolish and inexperienced decisions cost us our reserve. Nobody else gets off the hook. Why did they?

(2) Bring in a 0.5% financial transaction tax so that the corporations and banks return a minuscule portion of their profits to the communities that support them; 17 countries have instituted a financial transaction tax, and we could do away with the hated GST. Paul Martin said from the poop deck of one of his offshore ships that a financial transaction tax would be too hard to administer. Well then, let him administer a depression.

(3) We should cancel NAFTA, as provided for in the agreement, by giving the US and Mexico six months' notice. It would be wise to do this before the US pressures us to roll the Bank of Canada into the US federal reserve, which has already been talked about and suggested, and before we have to burn their radioactive waste as they are now doing in Oakridge, Tennessee. As you well know, Harris lifted the ban on incinerators and one will be coming to a town near you shortly.

(4) We must acquaint the people of Canada with the fact that Canada's wealth is in the trillions and that our government has capital assets to which they never refer when they discuss the deficit.

(5) Don't listen to the corporate fairy tale that the market will balance itself and doesn't need regulation. It has not, it cannot, and it will not. All those who say so have secret yearnings to live in Disneyland.

(6) We must drive towards representation by population so that democracy can never again be twisted into dictatorship by a few temporary power brokers.

(7) This could be the most important one, it's so insidious. Do not let the forthcoming scheme to fingerprint and card all those on social assistance be instituted. The Royal Bank, Paul Desmarais's corporation, Great West Life and Unisys, a US corporation that has been banned for unethical practices, are going to make millions by tracking the huge workforce force they have created. We must stop our civil liberties from being taken away. This march to have the little card, the identifying card and finger-scanning, is being done to assure Chrétien's Asian counterparts that he can compete with their child labour, prison labour and medieval wages. This scheme will be brought out at Metro Hall on May 12.

This unrelenting blitzkrieg of bills, these numbered and nameless atrocities, should be identified publicly as the



infamous robbery bills, and any bill which removes the right of the citizen to participate in his ownership of any public utility or institution, or his participation in his own destiny, should be immediately challenged on the grounds that it removes the consent of the governed, on which democracy is founded.

**The Chair:** Thank you very much for your presentation.

#### JUNE RILETT

**The Chair:** I'd like to call now on June Rilett, please, to come forward. Welcome. You have 15 minutes in which to make your presentation.

**Ms June Rilett:** My name is June Rilett. In 1996, I was laid off from the Royal Ontario Museum after having worked there for seven years. I now create and sell T-shirts and other products to promote social justice and as a means of earning a livelihood. I am Canadian-born and have lived in Toronto some 25 years. Until the early fall of 1995, I would say I was like a lot of citizens in the province. I had a job, a job which I liked; I was actively involved with a number of personal interests. But unfortunately I left to the government in power the important role of protecting my rights as a citizen. This had sufficed in the past, and so of course I naïvely assumed it would suffice in the future.

To those who have always been engaged with political matters and social justice issues, this will probably be seen as a typical attitude of someone who has been lucky enough to live in a democratic society. I do believe, however, that I was no different then than thousands of other fellow Ontarians who still now conduct their lives in a similar fashion. I was one of the unconscious citizens, as John Ralston Saul so aptly describes in his book *The Unconscious Civilization*. Now that I am awake, I have spent the last year and a half becoming more informed about what is happening in our province and our country and am now totally committed to doing everything I possibly can to preserve a caring society that will support the public good for all its citizens.

My own personal wake-up call came on October 1, 1995, when the then Minister of Community and Social Services, David Tsubouchi, announced a 21.6% cut in social assistance. This was followed by a recommended shopping list for welfare recipients for which \$90.21 a month would suffice, if one lived on bologna and dented cans of tuna. I found it shocking that a member of my government could be so insensitive to the people whom he had just deprived and who were financially much less fortunate than himself. What kind of government did we have at Queen's Park? It was very clear to me that I could no longer sit on the sidelines and do nothing.

Shortly before I left the museum, I registered my business, June for Justice, and immediately initiated my plan to stay alive by designing my own humorous T-shirts based on the continuing mistakes and misdeeds of this government. I know my shirts have given rise to lively discussion, leading people who have not been aware of these issues in the past to wake up, stop being complacent, and take a stand before their way of life is cut down, sold off and carted away by this government.

I am here today to register a strong voice against Bill 107, the Water and Sewage Services Improvement Act, 1997, a bill which I believe has the potential to seriously harm Ontario residents, both in terms of their health and their democratic rights and freedoms. I cannot believe that the Harris government intends to take our precious publicly owned water supply and allow it to be privatized by selling off our Ontario Clean Water Agency.

This is being considered, despite strong opposition of 76% of Ontarians who stated their voice in a 1996 Insight Canada poll that they wanted to keep water in public hands. Our government seems fixated on selling off everything that we the public own, and our water, our source of life, one of the most valuable treasures that all Ontario citizens can call our own, is now up for grabs too.

One has only to look at some of the horrors of the privatization of the water systems in England and Wales to realize how removed the Thatcher government was from its people when it caused human misery on a grand scale in the name of greed and corporate profits. Water rates shot up from 100% to 400%. Some 21,000 poor families in 1991-92 were either disconnected from receiving water, had to ration their water or even reuse their rationed water because they couldn't afford the exorbitant water bills. Dysentery rose by 600%; there were outbreaks of hepatitis A and other gastrointestinal diseases, and the most vulnerable — the sick, the poor, the elderly, mothers and children — were the needless sufferers. Is this Mike Harris's grand plan for Ontario?

Profiteering and failure by private companies to make sufficient reinvestments to maintain a quality system during a drought in Yorkshire in 1995 caused a national disaster; 26% of the water collected by Yorkshire Water was lost through leakage. A public relations man for the company even had the nerve to demonstrate on television how a person could wash with only a few cups of water in the sink. He claimed he had not showered, but it was soon discovered that he was sneaking out of the district to have a shower at his mother-in-law's house. The situation in Yorkshire became so serious that water was eventually ferried into western Yorkshire 24 hours a day. Every available tanker truck was used, the largest peacetime tanker operation in history. And our government would have us believe that this kind of privatization is efficient or money-saving. What a blatant lie.

In the middle of winter of one year, 600,000 people in Yorkshire were even notified that their water supplies might be cut off on a rotational basis. The Guardian reported a story from Birmingham where a number of tenants were disconnected from their water and could not flush their toilets. To cope with the situation, tenants were defecating in the stairwells and even throwing excrement out the window. The caretaker of the building described the situation in three little words: "Quite a stink." These kinds of health risks were so prevalent in England and Wales that finally the British Medical Association had to call for a ban on disconnections.

In 1995, it was estimated that 29% of the 16 billion litres of water distributed in England and Wales every day leaks out of the system. According to our Ministry of Environment, 25% of Ontario's water and sewage

infrastructure is almost 50 years old and nearing the end of its lifespan. Would corporations have the social conscience and will in Ontario to put aside their corporate greed and profits to attend to the repair and maintenance of this aging infrastructure?

We just have to be reminded of the Love Canal tragedy in Niagara Falls, New York, to seriously doubt that this would be the case. The old Hooker Chemical company disposed of its toxic wastes in the canal and then sold the property to the city's board of education, which resulted in hundreds of deaths and serious illnesses among the citizens who tragically had the misfortune to live there.

1520

In the UK, in addition to all the public health problems, there was much environmental deregulation. There were 250 successful prosecutions of water companies, but fines were so low that they had little effect on these companies' future environmental behaviour. There is no guarantee with Bill 107 that the same environmental disaster as described above wouldn't occur in Ontario.

It is my understanding that while I talk, 20 multinational water companies are already lining up at this government's door, along with other powerful Canadian corporations, including our banks, to make vast profits on our water. Water pipelines to the US are also being discussed, even though Canadians were promised during the propaganda blitz to sell us on NAFTA that this would never happen.

I am amazed that thousands of citizens are not storming the doors of this hearing room, but most of the public have either been kept in the dark or have been just too bombarded by all the other bills being raced through this House at lightning speed. I also note that nothing, or at best very little, about the hearings of Bill 107 has appeared in the media, so it looks as if this government and big media are up to the same old tricks. We could call this tyranny by information overload.

The Harris government need only turn to the Alberta Conservative government under its darling, Ralph Klein, to look for a model of how privatization worked there. Kevin Taft, in his book *Shredding The Public Interest*, states it as it is:

"Twenty-five years ago Alberta was solid and Albertans were secure. There were huge oil and gas reserves; education, health and other programs that led the nation; sound government finances; and a promising and certain future.... Alberta has [now] been hollowed out, a shell of its former self. Alberta has gone from having the finest public services in Canada to having some of the poorest. More than \$90 billion in non-renewable resource revenues has flowed through Alberta government coffers since the Progressive Conservatives were first elected. Alberta has developed the most heavily subsidized private sector in Canada. Alberta society is fractured. Haves and have-nots blame one another for social problems. People who speak out are degraded as whiners." Sounds familiar, eh? "Social unity has been sacrificed to the politics of divide and conquer."

It seems to me that if we want to preserve a civil society, there are certain basic things that cannot be turned into products to be bought and sold. To do so

would be contrary to the whole meaning and integrity behind what constitutes a civil society.

What is a civil society, then? A civil society would never allow libraries and schools to be sponsored by commercial corporations, because a civil society would know that this would destroy the very foundation, independence and meaning of education. A civil society would never allow citizens to die in the street while giving the most wealthy an enormous tax break. A civil society would never allow a patient to die forgotten in a hospital while thousands of nurses are discarded.

A civil society would never allow its population to become deathly ill with dysentery or hepatitis to merely fill the pockets of a privileged few. A civil society would want to provide safe, clean and accessible water to all its people. A civil society then would not want to sell the inheritance left to us by generations of Ontarians before us who toiled and sacrificed for our benefit. A civil society would never discuss an issue as important as the privatization of Ontario waters without any public media in attendance.

A civil society doesn't allow strangers to enter our homes and sell off our belongings. We call such behaviour theft and we call the buyers receivers of stolen goods. We punish accordingly. What then should we call those who try without our permission to sell off or buy the property that belongs to all of us as citizens? What punishments shall we mete out and what actions will be necessary to reclaim that which is ours?

In conclusion, if the privatization of water is permitted to take place in Ontario, it will be another assault on the poor and the less fortunate in our province, since citizens would be in no better position to negotiate water prices for themselves than they would be to negotiate Tsubouchi's dented cans of tuna.

Kevin Taft sums up brilliantly what a responsible government needs to do to preserve a civil society for all its citizens:

"Political leaders alone cannot determine the public culture of a society. But they can influence it strongly. They can appeal to the anxious, selfish, mean-spirited nature that lurks in each of us, or they can appeal to nobility, tolerance and generosity. People with differing points of view can be sincerely considered, or they can be called humiliating names. Governments can help people get a fair break and build a powerful society, or they can further enrich and empower those who are already rich and powerful, building a society of haves and have-nots. Governments can tell the truth, or they can lie."

Just as a departing postscript from my company, June for Justice, the hot number T-shirt that's selling now goes with the slogan: "Let's kick Mike and his privatizations! Save Ontario! Stop Harris!"

*Interruption.*

**The Chair:** Thank you very much. Your time has expired, but we appreciate you taking the time to come before us today.

While we're waiting for our next presenter, is Mr Sheppard here? Mr Vallance? Mr Vallance, welcome.

While you're getting settled, I'd just like to caution the people in the galleries. This committee functions under



the same rules as the House of the Legislature, which requires that the galleries can be attended, but there are to be no demonstrations. These rules must apply in this committee hearing.

If you have attended the Legislature, you will know that in the past the Speaker has said if this rule is not followed, the galleries will be cleared. I would hate to have to do that in this committee hearing, so I ask for your indulgence in following the rules of the Legislature of Ontario.

#### CONFEDERATION OF RESIDENT AND RATEPAYER ASSOCIATIONS

**The Chair:** Mr Vallance, welcome. Would you kindly introduce yourself. You have 15 minutes for your presentation.

**Mr David Vallance:** My name's David Vallance, appearing on behalf of the Confederation of Resident and Ratepayer Associations of Toronto — the current city of Toronto, that is. Although I'm presenting on their behalf, this hasn't been vetted by the whole organization and some of it's my personal views, and I'll try and define that.

To continue, I'm really not sure what is driving this government. Much of what you are doing may well be heading in the right direction, but you aren't bringing the public along with you. Recently, a headline in the paper said something to the effect, "Government at a Loss at Blame on Health Care." The point of the article was that you thought you were doing the right thing and health care would continue to receive the same amount of money, but the public either didn't understand or, more important, didn't believe you.

Much the same thing applies to this bill. Headlines a few months ago said, "Government at Odds with Public Opinion on the Environment." The perception is that funding for important regulatory and testing programs has been cut to the point where environmental safety has been jeopardized. It also appears to be the reality. This is at odds with the 80% of the public who polls show want more stringent legislation on environmental protection.

It seems somehow that the focus is on giving an income tax cut, and anything necessary to do this is going to be done. The idea seems to have come from the US, where Newt Gingrich — that's the Senator —

**Mr O'Toole:** House of Representatives.

**Mr Vallance:** The House of Representatives — won a victory and is leader of the House now since the elections in 1994. In the most recent Economist of April 5, 1997, Mr Gingrich no longer talks about tax cuts and cutting the deficit at the same time. Mr Gingrich now realizes that tax cuts are less important in the minds of most voters than good management to reduce the deficit.

There seems to be no common sense when this government does something. In Toronto, it wants to amalgamate everything into one to reduce government and create savings. This Bill 107 proposes to turn a provincially managed water system in 230 municipalities over to those 230 municipalities, along with the responsibility for inspecting and regulating septic systems. In Toronto, you want to get rid of six fire chiefs and in the rest of the

province you want to create 230 managers of septic system inspections with 230 different interpretations of what is allowable, assuming any inspection is done at all. 1530

While writing this, I listened to a short program on the environment. Someone said the government is withdrawing from many areas. You should know by now that the withdrawal method is very unreliable. "But," you say, "how can we compete economically if we have all these environmental regulations and so many areas of the world do not have any?" Of course, we in the wealthy, developed world consume 80% of the world's resources with 20% of the population, so maybe we have an obligation. Perhaps there's another way.

During the megacity debate, I had the opportunity to have many discussions with Wendell Cox, the American consultant on amalgamations and transportation systems. One night, we were discussing the waste that was being created with the whole process of amalgamation and the ongoing cost of the bureaucracy that would be created. Mr Cox said, "I believe it is possible to do everything we want to do without any increases in taxes if we would work at making government as efficient as possible."

On virtually every issue, this government seems obsessed with cutting or withdrawing from areas of responsibility, rather than examining options to make things work better. You are imposing, or at least trying to impose, the most expensive system of government for Metro, you have chosen the most expensive and most hated system for assessment of property taxes and now you are abdicating an area where 80% of the population says it wants more control.

It would seem to me that there are many areas of water and sewage management where economies are possible by having a central system for testing and for developing new techniques for treating. I doubt that all 230 municipalities have enough work to keep a full-time inspector, much less the ability to know if the inspector is keeping up with new technology. Then there is the problem of keeping equipment etc. The cost of all this is not going to be welcome and many municipalities will fudge it.

"Privatize it," you say. For me, that is not a problem — and this is a personal opinion — for the treatment and distribution of water and the collection of sewage. Of course, that would require government control, like all monopolies, such as Ontario Hydro or Consumers' Gas. Ontario Hydro may be a bad example. The real concern is the same as the 80% mentioned above, and that is for the setting and monitoring of standards, for the testing and inspection for quality. Somehow I just don't believe you are going to do that aspect of it as well as we expect. Why do I say that? Take a guess. Hint: I'm from Toronto.

At the end of the hearings in Toronto on Bill 106 last week, I spoke with Isabel Bassett. I said, "Isabel, it seems as though you have to leave your brain at the door when you come into the Legislature." She replied, "There is a system, you know." On a TV program a couple of weeks ago, Hugh Segal said, "MPPs were not elected to be lapdogs of the Premier or cabinet." How does that square with Mrs Bassett's comment?

When you were elected, I was rather pleased — I really was — although I didn't vote for you. My wife

did. The election result suited me just fine because my understanding of the Common Sense Revolution was that this Harris government was going to bring efficient and effective government to the province. What a bad mistake. The deficit reduction is in no small way the result of federal policies and, as reported in the *Globe* today, our proximity to the United States that have given the province a revenue boost that in no way relates to what you have done. Much of the revenue for the last year is the result of profit earned in the year before, that has nothing to do with this government. Some of the poorest and most disadvantaged people in the province have suffered severe hardship because of your hamfisted approach to change.

Your approach to education is directed primarily to elimination of politicians — ie — trustees, and duplication. There has been little discussion about teaching improvement. There seems to be little understanding of the business world. Why do we need five major banks and a whole lot of little ones? Why do we need over 100 insurance companies? Is it possible that this may be the most efficient way to get the job done?

This is the crudest way to deal with a real environmental issue. Slashing and burning doesn't get the job done. Careful planning and effective management is what creates an efficient operation. There is no talk of that.

I've made my living as a salesman. One thing I've learned is that everyone is a salesman. The second thing I've learned is that you can't shove a sale down somebody's throat and expect to get repeat business. The third thing I've learned is that you cannot be a success without repeat sales.

*Interruption.*

**The Chair:** I must remind you this is a committee of the Legislature as the whole.

Mr Vallance, we have six minutes left for questions, two for each caucus.

**Mr Laughren:** I found your presentation interesting, Mr Vallance, but I was puzzled about one thing, and I'm not trying to be deliberately stupid on this one.

**Mr Vallance:** It doesn't take much effort.

**Mr Laughren:** You said, "I just don't believe you are going to do that aspect" very well. "Why do I say that?... I'm from Toronto." What are you getting at there? I really didn't understand that. You're talking about standards and monitoring and so forth.

**Mr Vallance:** I guess 75% of the people who voted in the referendum don't believe the government —

**Mr Laughren:** Sorry. I didn't make the connection with the referendum.

**Mr Vallance:** There is a connection. It's the same government that's doing it.

**Mr Laughren:** Yes. I don't disagree with you there.

Your point on the first page talks about provincially managed systems in 230 municipalities and creating a real hodgepodge. An engineer was here this morning who made the point, and he used — is it called the Oak Ridges moraine? — Oak Ridges moraine as an example, the watershed coming into Metro.

**Mr Vallance:** Oak Ridges moraine, yes.

**Mr Laughren:** He was using that as an example of how you could have all these different municipalities and

if they privatized their sewer and water supply, they could each have different standards as the private sector operated different utilities all in that area and you wouldn't have any consistency of environmental policy as regards water conservation or quality. I think your point here is very well taken. It's just in the last few days that people are starting to question that aspect of it. People have been questioning other aspects of it like privatization, but they are now starting to question how that makes any sense at all. I don't know whether you've put your mind to how you'd ever resolve that, but I'd be interested in your comments.

**Mr Vallance:** I don't think privatization is a panacea for all government ills. I don't necessarily believe that privatizing garbage in Toronto, for example, would create a more efficient system. I'm not a privatizer per se.

I don't have a problem with privatization, though, where there is some justification for it in terms of more efficient operation and in terms of the expertise in some of the things that can be done in the private sector that wouldn't normally be done in government. However, if you do privatize something like water, then it is absolutely essential that the regulations and the pricing be controlled by the government, the same as we control the prices for hydro to a certain extent and rate increases and so on for Consumers' Gas. Those things have to go through regulatory approval. For water, that's absolutely essential because water's probably more important than electricity or almost anything else. I mean, I'm drinking the water here; I hope it's safe.

If the distribution and the collection of the sewage are privatized, I'm not firm one way or the other on that, but as far as the monitoring, the testing and the regulation, it's absolutely essential that the money be there to do that job.

**Mr Galt:** Thanks for your presentation. Just a couple of comments I'd like to make to try and clarify some concerns that have been expressed. There's certainly been a number of statements made that the province does not have standards for water and sewage treatment works.

It's important to understand that all water and sewage treatment plants must have a certificate of approval issued by the Minister of Environment and Energy subsequent to a review of the technology. Terms and conditions placed on these approvals require compliance with the Ontario drinking water objectives for effluent criteria in the case of sewage works. These terms and conditions are enforceable in law and have the equivalent effect of standards and the standards will be enforced across the province.

There's no suggestion in this bill or any other one that there will be patchwork pieces of different rules and different regulations. This bill is about transferring the ownership of those plants. You expressed that 80% of the population wants to have more control. That's exactly what this is all about, putting 230 of the plants in the hands of the municipal councils so that they do have control at the municipal level, and that's where the biggest control is. It's not at the provincial level or at the federal level.

It's possible — I'm not sure — you're suggesting that 75% of the plants should be turned over to OCWA with



some of the comments that you've made. I don't think so. I think the best idea is to put them in the hands of the municipal governments where they are the closest to the people. That's what the bill's all about.

**Mr Vallance:** This is some of the rhetoric we've been getting on everything. Putting the control of the water system on a municipality with 1,000 people makes absolutely no sense whatsoever because there's no possible way they can afford the proper testing and inspection that's required for a system of that size. You need an outside regulatory body.

1540

**Mr Galt:** And there is.

**Mr Vallance:** Although I don't have a problem with the privatization, maybe turning the running of that over to another operation, I guess my concern is — and it's not something I'm intimately acquainted with; I read the newspapers and it's not just in the last week this has come about — I've been watching for the last six months and I hear of scientists who are let go, I hear of departments that are shut down that are, as far as I'm concerned, pretty vital to our long-term viability as a country in terms of our ecology. That has a concern for me, and I think the 80% of the population I'm talking about is referring to that, not the control that goes to a local municipality for the distribution and pickup of the sewage. I'm talking about the control over the standards, and that shouldn't be at a local level. That has to be run by a larger body and the provincial government's the obvious one to do that. That's where my concern is.

**Mr Galt:** That's the way it is and that's the way it'll stay.

**Mr Vallance:** We're sceptical. Let's put it that way.

**The Chair:** Our time has expired. Thank you very much for coming this afternoon. Is Mr Sheppard here?

#### REGIONAL MUNICIPALITY OF OTTAWA-CARLETON

**The Chair:** We'll move then to the representatives from the regional municipality of Ottawa-Carleton. Welcome.

**Ms Alexia Taschereau-Moncion:** My name is Alexia Taschereau-Moncion. I am a solicitor for the regional municipality of Ottawa-Carleton. My colleague here is Mr Jim Miller, who's director of engineering services for the regional municipality of Ottawa-Carleton.

As you know, section 3 of the bill transfers to municipalities most of the responsibility for regulating the construction and use of sewage systems under part VIII of the Environmental Protection Act. We are here today to specifically deal with that issue.

Regional council adopted a report, which we have passed along to members of committee, on March 12, 1992. Recommendation 2 of that council report suggests that the first and second readings of Bill 107 be amended, assigning responsibility of the part VIII program to the upper-tier municipalities.

At this point, I would like to transfer the responsibility to my colleague, Mr Miller.

*Interjection.*

**Mr Jim Miller:** Madam Chair, I'll try and speak a little louder so that the audience can hear.

Just to emphasize, we're here to discuss the rural issues of Bill 107, the part VIII program regarding septic tank systems. If I could take a couple of moments, this photocopy was distributed to committee members just to orient you to Ottawa-Carleton and what our particular issues are.

Ottawa-Carleton comprises 11 municipalities, population 740,000 people. Of that group, 90% are in our urban area and are serviced by our central water and sewer systems; 10% are in our rural area. In this photocopy in front of you, just to orient you, the very dark is our greenbelt, the shaded area is the area that is serviced by our central systems and the white area is our rural area. As I said, we're here to talk about the issues that affect the septic tank regulations.

RMOC is responsible for the protection of public health, the approval of all lot creation and the protection of environmental and remedial measures when septic tanks fail. Therefore, we believe the region is the appropriate level to be responsible for this program. We make this position because groundwater is a scarce and valuable resource and the regional municipality is ultimately responsible for the remedial measures in case of systems failure.

I want to advise committee here is we that have had system failures and tremendous dollars have had to be spent. Just to point out on this overhead or this map here, there's the community of Carp here, there are the communities of Carlsbad Springs, Vars and Manotick. You may have heard those names. In Vars, we've spent \$8.5 million in the last three to four years putting in a water system; Carp, \$17.5 million for a water and sewer system; Carlsbad Springs, \$6 million; and, Manotick, \$4.5 million for a water pipe extension from our central system.

In the case of Vars, Carp and Carlsbad Springs there is conclusive evidence about septic tank failures and the need to bring in these communal systems to solve the health problems. In the Manotick case, it was contaminated groundwater. It was not conclusively from septic tanks here; it was conclusively from poor practices dealing with industrial waste. However, we are aware of septic tank failures in that community. Totally, \$36 million of public funds have been spent dealing with these problems, and graciously, 30% has been supplied by the province. I'm not optimistic that we will still get that level of support to deal with future problems.

We believe it's important to have a consistent approach regulating septic tanks throughout the region. We believe there's an economy of scale if the region is involved in dealing with this. We believe a uniform fee structure throughout the region will lessen the possibility of competition between local municipalities and ensure the proper standards are achieved. The regional municipality also has a mandate, and they carry this out, with respect to public education. We believe we can well serve in this area as well.

As I stated, we think there's a direct link with the part VIII program and the hydrogeology issues and that groundwater protection is a responsibility that's very important.

For those reasons, the report that has been distributed to you has been approved unanimously by regional

council. I would draw you to the recommendations, specifically recommendation 2, that the Ontario Legislature amendments to the first-reading version of Bill 107 assign responsibility for the part VIII program to the upper-tier municipalities — Ottawa-Carleton, we're speaking of.

I note that recommendation 3 is in the event that there is no amendment. Then we are going to endeavour to deal with this on a local basis, and I urge this committee to make a recommendation to deal with this and assign that responsibility to Ottawa-Carleton in our area. We'd be pleased to answer any questions.

**The Chair:** Thank you very much. We have nine minutes remaining for questioning.

**Mr O'Toole:** Thank you very much for an interesting perspective and a very well defined problematic delivery of this service. I just want to ask you a question: Do you have an in-house service specialist in the area of the septic or discharged water, or is this consulted out? Does the region of Ottawa-Carleton do this?

**Mr Miller:** I'm pleased you raised that issue. Presently it is administered by the Rideau Valley Conservation Authority and it would be our intention to maintain a relationship and use the expertise that is already there, but we believe it's appropriate that we have the legislative power to control the service levels and the fee structure etc for the uniformity requirements. They have the training and it would be our intention, and we speak to that in recommendation 4, our report speaks to that, to use that expertise.

**Mr O'Toole:** So I guess you don't have it in-house.

**Mr Miller:** We do have —

**Mr O'Toole:** You will consult it somewhere, but you want to be in charge of it, manage it.

**Mr Miller:** Yes, absolutely. We do have a considerable amount of expertise with respect to a surface water quality group that monitors surface water. We are recognizing these groundwater issues that are more and more pressing us and causing us to have to deal with these areas, remediate these problem areas. I would say that we are well suited for having to deal with the problems, so we want to have control to make sure that they don't get any larger.

**Mr O'Toole:** Let's talk about the other side of that equation. Again, I'm trying to explore this; I don't really have a preconceived answer. The operations of the plants themselves — now we're getting down to another phase of what we're talking about here — for example, the inspection itself: Do you have any recommendations on the efficient way of doing that with the properly trained, properly certified people, maybe even being the building inspectors as they go to a site looking at the structure? Is there any chance you could publicly look at that training and certification process for the appropriate personnel with training to — you know, is that the way you'd approach this?

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**Mr Miller:** We do have the health department, we have public health inspectors. They have in the past, in history, administered this program. The training is very important. I think, as in some of the earlier presentations I heard, it can't be done in a hodgepodge fashion and you

need the uniform training. Somebody made the comment about if you only have a part-time position dealing with that, I don't think you'd get the expertise that you need to deal with it. That's why we believe the economies of scale we can offer, that we would have in dealing with this in a regional fashion, are very appropriate.

**Mr O'Toole:** But you might be able to also contract that, not to put a bad word on contracting.

**Mr Miller:** Absolutely.

**Mr O'Toole:** Let's say that Philip Environmental or somebody else had the greatest proven track record, would you not be wise to use their —

**Mr Miller:** We would certainly consider that option. We're not negating that at all. In fact, I'd like to emphasize our approach is that we would use the expertise that we already know, that is, looking at it on a uniform basis, rather than to segment it. That's what concerns us very much.

**Mr O'Toole:** Quality water for the citizens is really your primary concern.

**Mr Miller:** Absolutely, yes.

**Mr O'Toole:** I agree with you totally.

**Mr Agostino:** I had a chance to read the report that was given to us earlier. There does not appear to be any relation or any reference to additional cost from your review. As a result of this proposed change, will there be any additional cost to the municipality?

**Mr Miller:** Our intention with this is that service would be carried out on a cost-recovery basis. So effectively additional costs would be covered in that fashion. It's not a service that would come for free. All of our water and sewer services in Ottawa-Carleton are on a total-recovery basis.

**Mr Agostino:** Does that include the cost of infrastructure as well?

**Mr Miller:** Absolutely, the cost of infrastructure. However, I emphasize that the large expenditures to deal with problems, and we know we have existing problems, have been totally funded from the provincial grant structure that has been in place to date, plus the residents or the problem areas have paid to top it up to take it to the 100%. That is a regional council policy.

**Mr Agostino:** Just to follow on that, under the proposed changes here, with the grants being eliminated — that's one of the options in this — does this leave the door open? Obviously too, if you run into a problem and you must do infrastructure changes to your system, if it goes into the millions, as an example, as some major difficulties could, would you simply pass that on to the local taxpayers as part of the cost of water and sewer services in Ottawa-Carleton?

**Mr Miller:** That would be a very tough decision because of the tremendous cost to solve these problems. I mentioned the \$36 million and I would say that \$36 million has dealt with about maybe 3,000 residents. Those are the kinds of numbers. So I don't know how that pill can be swallowed without some sort of support. What we're getting at is we think it's appropriate to solve these problems up front and not have pollution problems. That's why we want to have that control to ensure that we're doing everything possible not to have future problems like Vars and Carp and Carlsbad Springs.



**Mr Agostino:** But there should be, in your view, obviously a mechanism to ensure that provincial grant is available to help with some of those programs, or if you run into another situation where you have to spend \$36 million for 3,000 residents, I would presume if you were going to base it on that cost per user, I don't know off the top of my head, but it sounds like it could be a hell of a lot of money for each resident. That's the scenario you could be facing once you eliminate the grants and support payments that would have been there to help municipalities make some of those changes. I think that's the danger in part of this whole package, that if you go on that basis, on that user-fee philosophy across the board like that and you include total elimination of your infrastructure money, to help upgrade or build or make changes to these facilities most citizens would be in a situation where they would not be able to afford to pick up that cost, the \$36 million, as an example, that you've just outlined, if it had to come from one particular municipality or one particular area within a municipality.

**Mr Miller:** What we're very concerned about is the potential for significant expenditures to solve the problem. We have the mandate to deal with potable water in Ottawa-Carleton. We want to protect that interest. We want to ensure it's done right. We want to ensure there are no problems before they happen. That's what we're asking this committee to consider through this legislation.

**Ms Churley:** Thank you for your presentation. I was quite interested in your last comments about prevention, because I believe that's very important. We don't have time to get into the details of the implications of what that means. I don't know if you're aware, but this government has loosened the MISA regulations over the past year. You know what MISA is, of course.

**Mr Miller:** Yes.

**Ms Churley:** It has in fact gone in the opposite direction from preventing chemicals from getting into our sewer systems. On top of that, I'm concerned beyond the privatization issue, so I'm not going to get into it with you because we don't have time. I'm interested in the cost stuff. I remember when we were in government; there was never enough money for municipalities for sewer systems, because there are infrastructure needs etc.

One of your recommendations is about the conservation authorities and that you would approve of these responsibilities being delegated to them. They've had their funding almost totally chopped. I just don't know where they're going to get the money to do that. On top of that, groundwater and hydrogeology staff have been cut from 28 to 15 — 53%. I could go on about it; I'll stop there for now. We can't play games with this stuff. This is our health, our water, and there have been so many cuts and now more downloading coming. I just don't see how municipalities are going to be able to carry on — and I think you have some good ideas — with all of these cuts throughout the system. Good, clean water costs money, to make sure it stays clean. I don't know what your comments are on this, but we can't pretend it doesn't cost money.

**Mr Miller:** If I could, just a couple of brief comments. With respect to the region's position regarding the conservation authority, they would be delivering a service

on a total cost-recovery basis. Whether we contract it to them or whether we contract it to Philip Environmental or someone else, we want to ensure we get the proper level of service we think is appropriate to protect our interests and our responsibilities to clean up. I know they're doing it on a cost-recovery basis.

The other issue you mentioned, about the MISA program — and I did comment about our surface water quality group. Regional council has taken a very specific position regarding industrial waste and we I think have gone beyond what the provincial requirements are at this time to ensure that these pollution problems don't cause us bigger headaches later. We do believe that prevention up front is the best way to deal with it, and that's why our position in front of you today.

**Ms Churley:** Thank you, and I'm glad to hear that because I know there are some municipalities which do a much better job than higher levels of government in terms of protecting the health and environment of their citizens. So I congratulate you on that.

**The Chair:** Thank you very much. We appreciate your taking the time to come and make your presentation to us today.

#### PHILIP UTILITIES MANAGEMENT CORP

**The Chair:** I'd like to now call Mr Stuart Smith to come forward, please. Welcome.

**Dr Stuart Smith:** Thank you, Madam Chairman. It's a pleasure to be here.

**The Chair:** Your presentation time of 15 minutes includes your presentation and questions from the caucuses.

**Dr Smith:** Yes, I'm aware of that. Things have tightened up since 15 years ago when I was last in this room in a slightly different capacity.

**Mr Agostino:** It has changed a lot, Stuart.

**Dr Smith:** So obviously it's a tight ship being run in this place, I'll tell you. I'll do my best.

Thank you very much for the privilege of addressing the committee. I am here, as you know, in my capacity as president of Philip Utilities Management Corp, which is the largest Canadian-owned private sector water and waste water management firm. We are the contracted operators, as you know, of the regional municipality of Hamilton-Wentworth's water and sewage plants, as well as water and sewage plants and works in several other smaller Ontario locales and in the United States.

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We are here to support Bill 107. We agree with its underlying premise, namely that municipalities should have the freedom to choose, the freedom to select in open competition the operators of their own municipal water and/or sewage works. If they wish to do it themselves, that's fine as well, obviously. By clarifying the issue of ownership of these works, the province has effectively put an end to the practice whereby the Ontario Clean Water Agency, which I refer to as OCWA, by virtue of its alleged ownership of facilities, was restricting municipalities from arranging competitions. They would simply say: "No, you can't have a competition. We own it, so we'll operate it, thank you very much." This has finally put an end to that.

Committee members should understand that these competitions are very valuable as a source of savings to Ontario's municipalities. In every one of two dozen or so contests that have occurred in the last couple of years, savings to the municipality have never been below 20% and often much higher than that. We can document these. This is true even where the Ontario Clean Water Agency has won the right to continue the contract. In other words, they've given their best price and then when there's a contest they themselves submit a price which has never been less than 20% better than their previous price. So competition works, and I think most of us know that, but it's been proven over and over again. The truth is the competing firms are obliged to be as innovative as they possibly can be.

This is not the British system which Bill 107 is proposing. I've never seen so many people invent an imaginary foe so that they could make a living protecting all of us against this imaginary enemy. The British system is not being suggested for Ontario. The minister is opposed to it, I am opposed to it. Nobody I know is recommending the British system in Ontario. Yet I read in the papers day after day people are defending us against this system that nobody wants. In fact, even the British don't want the British system at the moment, as far as I can make out.

In the UK, what happened is that the central government simply decreed that public monopolies would overnight be turned into private monopolies. The benefit of competition was nowhere to be found. Furthermore, the new monopolists were able to set their rates and turn off the water for non-payers. We believe there's no need for this at all in Ontario. We are perfectly happy with the municipalities continuing to own the facilities; what we want to bring is expertise and efficiency in the operation of these facilities. Bill 107 clears away roadblocks and permits such competitive activities.

Let me say a word about the issue of quality. Ontario citizens, like everybody else, are rightly concerned that we continue high-quality services and safe drinking water. I can tell you our water in Canada generally, and in Ontario in particular, is better than any of the European countries whose big companies are coming here to tell us how to do things. So the fact is we have excellent water quality in our province and we always have had.

What they need to understand is that the provincial role as the regulator of water quality should not, and will not, change with the passage of this bill. There will be no difference whatsoever. Evidence from the United States indicates clearly that standards of water quality in private sector operations are no lower and are usually somewhat higher than standards achieved in the United States public sector. Ontario's public sector already maintains very high standards. The private sector companies will have every incentive to try to do even better in order to maintain their reputation and not to lose contracts they have signed.

It is generally easier for municipal authorities to demand performance from an outside contractor than from their own managers and staff. If you go to your own manager and you say, "We're not meeting the quality," and he says, "Yes, but I asked you four times

for some additional people and you didn't give them to me," it's kind of hard to get into a fight at that point. But if you have a private company, you simply say, "You didn't meet the standards; you're out." It's a whole lot easier to demand accountability when you have somebody in that role.

Now to the role of what I'm really here to talk about, which is OCWA, the Ontario Clean Water Agency. We would really prefer that OCWA not continue to collect payments from municipalities with respect to outstanding loans which the province has given to help those municipalities to provide services. I refer to section 8 of the bill. Committee members should understand that OCWA has securitized these debts with the province of Ontario and makes money by charging higher rates to the municipalities than it pays to Ontario. This spread in the interest rates is in effect a poorly-thought-out subsidy to the water and waste water sector in Ontario since it has been used to cover the deficit that OCWA has traditionally run on the operations side of their business. Not only does this tend to mask any inefficiency in OCWA's operations, it also permits OCWA potentially to move money back and forth between the financing and operations category in their dealings with individual municipalities, and generally, I can assure you, to the detriment of those of us who would like to compete on operations alone and on a level playing field.

We are pleased that subsection 8(3) allows the minister to specify the apportionment of payments to OCWA as between financing and operations, but that's not going to be easy to do, and we still feel it would be better to separate the financing by taking it entirely out of OCWA's hands.

There has been much discussion about removing this loan portfolio from OCWA and placing it where it belongs with the appropriate financial agencies of the government of Ontario. For some reason this has been delayed and the result has been what we in the private sector consider to be continued unfair competition by OCWA.

As the only Canadian-owned company in the business of exporting these management services — we are, as you know, 70% owned by Philip Environmental of Hamilton and 30% by the Ontario teachers' pension fund — I am happy to tell you that together with our engineering and construction partners from the United States we have recently won a contest in Seattle whereby, in preference to all the largest water companies in the world that bid on this project, our group has been given the privilege of finishing to negotiate a contract to design, build and operate for 20 years a new drinking water facility for the people of Seattle. This contract will be the largest of its kind in North America and we are hopeful that our efforts at negotiation with the city, we're quite confident, will be successful.

By getting started in Hamilton we have created an export industry that will bring revenue into this province. We do not understand why we need to have our own province, in the form of OCWA, competing with us. We have seven or eight major companies competing with us already, and I'll tell you it's tough enough. To have our own province competing with us when the people



competing don't ever have to dig into their own pockets but rather into the pockets of everybody else in this room is a bit frustrating.

The minister stated this week in London, Ontario, that he does not want the province to be in conflict as "both the regulator and the owner-operator" of plants. I agree with him. Bill 107 deals with ownership, but the province is still in a conflict situation as to operations. OCWA is still competing with us to operate, and the fact is that the province is also the regulator.

Thank you very much for the opportunity of sharing these thoughts with you. I hope I haven't used too much time, because I'd like to have some time to answer questions and have discussion. I appreciate very much this opportunity, Madam Chair.

**The Chair:** Thank you. There's lots of time for questions, almost three minutes per caucus.

**Mr Agostino:** Thank you, Dr Smith, for the presentation. I am quite familiar with the Hamilton situation. I was a member of the regional council when the approval was given and I think overall that has worked well.

The point I've made consistently here in the last two days is that there's a distinct difference between a private operator coming in and running the facility on behalf of the municipality — because the key elements are protected, that is, the standards and setting of the rates, which I think are essential to ensure there's public access and to make sure everyone out there, regardless of income level, is not going to be at the mercy of a private sector company rather than the fact of local, municipal politicians having the ability and the power to set the rates. I think that is distinctly different from the ownership issue.

In the situation in Hamilton contracts were honoured, negotiated agreements were kept, union bargaining rights were not eroded whatsoever, employees who were there stayed there. That kind of formula is different, and I have said consistently that I have no problem with that.

The concern I have, and I think you've talked about it here, is about the potential, if not today, down the line, of downloading that may occur and the extra burden on municipalities, the fact that municipalities may want to look at selling the assets and the operation, which would formulate somewhat on the British model. What we have insisted clearly in the opposition is that the government bring in an amendment or a change to this that would simply ensure that municipalities continue to be the owners of the facilities and continue to have the power to set the rates.

Would you have any objections to that being brought into the legislation here, which would ensure that municipalities keep that control as far as ownership and power to set rates?

**Dr Smith:** Well, Mr Agostino, we could live with whatever the government and the elected representatives of our people decide, obviously, so it's not that we would object one way or another. I think municipalities could be given some flexibility in this regard. Let me explain. If the municipality were to sell to the private sector, it could still maintain the right to set the rates; or if it didn't have that, then you'd have to have a regulatory body which would set those rates. You couldn't leave that to the private sector.

Right now if somebody doesn't pay in Hamilton-Wentworth, whether we're there or not, as you know, you can put a lien on their house, essentially, and when that house changes hands, then you collect your money at that point. Let's say the municipality were to sell; let's say Hamilton were to sell us the plant. Hamilton could still set the rates, and even if it worked otherwise and we were to set the rates, Hamilton could have an arrangement whereby we could not turn off the water. We would simply go to Hamilton and say, "This person is not paying. You pay us instead, and then you put a lien on their property and collect it after their house changes hands just as you do now." This wouldn't have to be any different.

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The British didn't do that. The British left people at the mercy of the companies, which to my way of thinking is a horrible mistake. I don't think it's necessary to do that.

Let me point out one other possibility. Some municipalities have been talking about selling the asset and leasing it back and they do this to a limited partnership. The limited partners can then get depreciation on that asset, which is essentially a federal subsidy to the province, in effect. That's not such a bad idea. It can be done and some of these smaller municipalities have found that's not a bad situation at all. But they maintain complete control over setting the rates and they never allow anybody's water to be turned off.

My way of looking at it is that there are a number of hybrids, there are a number of middle grounds, where if you just passed an amendment saying the municipality must be the owner, you might be a little too limiting. We could live with that because frankly we're not looking to buy plants. We don't really want to buy plants. We don't want to buy these utilities. We don't want a regulating authority we've got to deal with. We're not looking for that, so we could live with it. When you ask me if I would have any objection, I'd say I could live with it, but at the same time you might be limiting things which municipalities don't want you to limit. That's the only point I'd make.

**Ms Churley:** Thank you very much for your presentation, Dr Smith. I want to go back to the British experience, and I'm very pleased to hear that you think it was and is a disaster. But the bill in its form could actually lead to that situation, which is why we're asking for an explicit amendment, which I assume you would support.

I want to tell you that if you look at Hansard — and there are reams of them from Britain — some of the very same assurances were offered then by British politicians and people in the business, and look what happened. We had a deputation here today from your line of business who has no operations in Canada — in the United States and other countries. When I asked him, "But you would agree that the British experience was a disaster?" he said: "No I wouldn't. I think there is one-sided press on that." The member for Durham East agreed that it was one-sided and I was quite shocked by his response.

It goes to show again that nice assurances are great but I want to see it in writing. My first question, Dr Smith, is: Would you support an amendment to that effect so it

can't happen here? My second question is: Who paid for the \$40-million gallon of the raw sewage that went into Hamilton Harbour? Was it your company or the public purse? Those are my two questions.

**Dr Smith:** I already answered your first question when Mr Agostino asked the question. As for the second one, what went into Hamilton Harbour was a consequence of the fact that Hamilton does not have a stormwater collecting system. Over the years when Hamilton region was running this plant there were spills over and over again into the harbour. When you have a big storm and a big thaw you have the overwhelming of the plant.

In this instance there's a further argument about whether an employee who was working for the region for seven years — was a member of the union and we took him over and he worked in exactly the same job — a couple of months later should have turned a pump on or off when he turned it one way or the other. There's an argument about that.

Apart from that, this is simply the overwhelming of an old plant in a city that doesn't have a stormwater system. What went into the bay, you should know, was cleaner than the water that was already in the bay. The fact is that this was an episode at five o'clock in the morning. Nobody is flushing their toilet at five o'clock in the morning. You had basically melting snow and rainwater, that's what you had, and it was going into the bay because it had overwhelmed the plant. So while people speak of raw sewage, it was not quite drinking water quality but pretty darn close. It was very dilute.

**Ms Churley:** Was there a cleanup?

**Dr Smith:** There was no cleanup required. The bay was not affected one iota. Not one penny had to be spent cleaning up the bay because there was nothing to clean; it was cleaner than what was there, so there was nothing spent, not one penny.

**Ms Churley:** So there were no costs incurred to the municipality?

**Dr Smith:** The only problem is, unfortunately there are a couple of homes that are constantly being flooded — it's happening frequently in Hamilton, and some of these people may be constituents of Mr Agostino — and these people had backups in their homes and they have sued the municipality, which has turned around and sued us because that's the appropriate thing to do. Our insurance companies are now settling the matter, so between us we'll get those settled. But the bay, no public funds have been spent whatsoever.

**Mr Galt:** Thank you, Dr Smith, for the most interesting presentation. You've kind of opened my eyes, and maybe I should have known, to the loan portfolio aspect. I'm curious and maybe you can tell me: What's the difference between what they charge municipalities in interest versus what the Ontario government charges OCWA?

**Dr Smith:** It averages out because this keeps changing. A lot of municipalities are paying off their loans as rapidly as they can. The last time I looked at it, Ontario was charging OCWA 7¼% to 7½% and OCWA was charging something in the realm of 9% — it might have been up to 9¼% — to the municipalities. So if you look at OCWA's annual statements over the past several years,

you'll find, Dr Galt, that they have always shown a loss on operations and a profit on financing, but the financing could have been done by anybody. If you can pay 7½% and collect 9%, you could be a chimpanzee and make a profit.

**Mr Galt:** It's kind of interesting that this has come out, because the day before yesterday we were having quite a little debate over whether OCWA was in fact making a profit or not, and now I can understand how they could break even or make a profit. I don't think it's debatable anyway, when it comes to a crown corporation making a profit or not making a profit, when they have the assets to back them up.

The other question I wanted to ask you about: Yesterday there was a question on York region's long-term water supply strategy. You'd almost think everything had happened, that they'd sold it down the drain, when in fact there's really been no decision. They've identified that their preference would be to retain ownership, and what they're looking at is retaining some consultants at the same time, looking at design-build-transfer. Mr Sid Ryan really got quite excited about that and said that's the worst possible scenario the Ontario government could ever take. I was kind of curious about your comments, whether a design-build-transfer with ownership of the municipality would be the worst possible scenario.

**Dr Smith:** No, I think it would be the best possible scenario for the municipality. It might in the long run, however, reduce the number of public sector jobs, so I can understand why Mr Ryan would be concerned, and it's his job to be concerned. I respect him for that. But I think what happens when you have the private sector — If I can give you an example, Seattle actually is a controlled experiment; accidentally it's a controlled experiment.

They went out the usual way. They got a respectable firm of engineers to do a drawing for them and they had it costed out and it came to something — I'm just going to use a number now — around \$150 million. They then turned around and said: "That's a lot of money. Let's see what happens if we have a design-build-operate — or transfer, whichever — situation where we get the same crew that designs it, they build it, they operate it. They don't come to us and overdesign it, underbuild it and then leave us with the mess." The net result was that we put together a team to do that: We got a builder and an engineer and ourselves as the operator and we came in and we are told, according to the news in public works financing, that we are something like 40% below what they were coming in at, so you're talking about savings in the realm of \$40 million to \$50 million by our doing it that way.

I recommend that design-build-operate be the way of the future whenever you're building new facilities in Ontario. Right now you have a contest to choose a consultant, the consultant draws up specs; you have a contest to choose an engineer, the engineer draws up specs which usually overdesign the plant; then to those specs you have a contest to choose a builder who usually underbuilds the plant. Then you're stuck, as a municipality, operating it.

**Mr Galt:** I think what we've ended up with is the municipal councillor's main job being to lobby for money



from the provincial government, when they get it they overbuild, and then they have to get more money to operate what they've overbuilt. I think it's really exciting that you're exporting this kind of expertise to the US. We hear all the time about things coming from the US into Canada. It's pretty exciting. It's too bad the newspapers wouldn't pick up on the kind of exports we're carrying out. Thank you and congratulations to your company.

**Dr Smith:** Thank you, sir. I think they will pick up on it. It's just that we can't announce the contract itself until we've signed it. We just won the contest, but that gives us the right to negotiate. It's going well, but until the signature is there, we can't announce it as a general announcement to the press.

**The Chair:** Our 15 minutes do go quickly. Thank you very much for taking the time to come this afternoon. We appreciate it.

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### SAVE THE OAK RIDGES MORaine

**The Chair:** I'd now like to call Anna Tilman from Save the Oak Ridges Moraine. Welcome.

**Ms Anna Tilman:** Thank you for the opportunity to speak here. I speak not as an expert but in two capacities: as chair of Save the Oak Ridges Moraine in the area just north of the city which has very sensitive areas that are under heavy study, and also as a resident citizen of York region. My presentation will be based on both aspects of my experience in terms of Bill 107. You might have already received copies of my submission. I'm not a politician, so I'll do my best with this.

In essence Bill 107 is transferring the water and sewage plants presently under provincial control to municipal ownership. The bill outlines new provincial guidelines and requirements for the sale of any water and sewer plants. These actions, along with Bill 26 which was passed a while ago, which removed the requirement that municipalities hold a public referendum on the sale of public utilities, strongly indicate that privatization will be the vehicle which municipalities will opt for as they attempt to grapple with the complex issue of water supply and sewage disposal, without necessary or needed support mechanisms in research, inspection and general expertise primarily due to funding cuts and loss of staff at ministry and municipal levels. Furthermore, no provision is given for independent regulation of water and sewage utilities.

For all service options there is a need to develop an integrated, holistic approach to water supply and sewage treatment to avoid adverse environmental consequences and inappropriate planning decisions. Comprehensive planning strategies must be based on the definition of environmental carrying capacity and should incorporate a holistic view of the environment and definition of development land forms.

The need to be cautious in areas of sensitivity cannot be understated. Land forms such as the Oak Ridges moraine lie within a number of municipalities and regions. The particular issues and unique properties and functions of the moraine regarding soil, groundwater, aquifers and natural heritage transcend political boundaries. What assurance is there under Bill 107 that municipa-

lities will be consistent across the moraine and that degradation does not occur?

**STORM**, the organization which is a coalition to save the Oak Ridges moraine, has several concerns with respect to privatization.

(1) **Accountability:** Private companies will be accountable to their shareholders first. Profits could very well be their first priority, and efficiency and conservation may not enter in.

(2) **Regulations and maintenance:** We could see a deterioration in maintenance and service of equipment if we don't have adequate safeguards or enforcement. What guarantee do residents have to a continual clean water supply and that sewage treatment will have the appropriate safeguards to ensure no leaching, contamination of groundwater etc? Why are we risking the health and welfare of all of us for expediency and short-term gain?

(3) **Affordability, allocation and access:** What guarantee is there that allocation of water supply will be determined by environmental considerations rather than profits, development, engineering and expediency? What assurance is there that the cost of water and sewage services will be controlled, in essence, and affordable? What likelihood is there that such costs may rise to the point where services become unaffordable to those on low or fixed incomes?

(4) **Long-term protection:** Ontario's waters may not be protected in the long term from those private interests. Through NAFTA, water may be exported to areas in the US and Mexico that may be subject to water shortages. Trade agreements make water a commodity which may have to be perpetually supplied.

(5) **Management and jurisdiction:** The fragmentation of management and jurisdiction over our water and waste water have already indicated some problems which have decimated our water budget.

**STORM** also has serious reservations about York region's formation of a partnership with the consortium of North West Water, Consumers Gas and the region itself to develop a long-term water supply strategy. I would like to address the issue of the consortium, the partnership, the experience in England with respect to privatization and the public process.

I first wish to address the public input process. First of all, how informed were the residents of York region with respect to this partnership being formed and its implications? On what basis was this company, North West Water, chosen for developing a long-term strategy for water supply? I'm aware of what has gone on in terms of how many companies were invited. Three were invited. On what basis was a decision made to form a partnership in the first place? What alternatives were pursued in terms of long-term water supply other than privatization? Has research been done into the experiences and effects of privatization of public utilities in other areas in a public utility such as water? Many people in York region are very unaware of what has gone on.

I'm sure you have heard about the English experience already. It has not been very good. I will go particularly to the York region experience.

In the search for a long-term strategy for York region, the partnership came up with nine possible options to

consider: pipelines generally; getting water from different sources, from Georgian Bay, Lake Ontario, groundwater etc.

Three open houses were held last November to obtain public input. Notification for these meetings was rather scanty and hard to find. Very few residents were aware of the issues and the level of complication with respect to the water supply and privatization. In total, 169 residents of York region came to this public input process. This was out of a population of 500,000-plus. You can't say people are apathetic. This does not necessarily speak to apathy and it can't be dismissed in that way.

I attended the open houses. At these open houses we were asked to fill out a questionnaire. The questionnaire was very confusing, obtuse and very subjective. In total, 59 residents or people who attended the open houses filled these out. Then to top it off, we got some glossy literature from this consortium, and this is one of the species: very glossy, very nice.

I want you to pay attention to something here. There is a map in this. It says "York region" and gives some numbers. This is not very mathematically done, by the way, and I'm a mathematician by trade and background. On further glance, this very glossy, well-described consortium has York region described on this map. I looked at what the map was and it wasn't York region. On further inspection I found it to be an area in North America, as a matter of fact in the United States. What they've done is impose the letters "York region" over a map of the Indianapolis area.

**Ms Churley:** It's an error.

**Ms Tilman:** It's an error, yes, but this is an error by a company and consortium to which we are entrusting delivery of water supply and so on. You may think this is small, but the reaction when I spoke about this to a meeting in York region — people did not know about this and they did not know about the open house. They wondered about the kind of money that goes into this stuff and they still can't get it right, something simple like this. Gloss hides a lot; true facts are what you're after.

After this "consultation" with 169 residents, after which other input was received of course on the whole process, a selection of preferred solutions was produced by the consortium. I have it here. Half the pages are blank, by the way. They're used as dividers. A final decision, a preferred solution was to be made as to which of these nine options was to be taken. On December 19, 1996, there was supposed to be an open meeting in York region. However, York region council declared the meeting to be an in camera meeting, and I and a number of other people were unable to participate and attend. That concerns me, and I'm very concerned about this lack of public input process in the true form, not just paying lip-service to it.

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Another area that concerns me: If we're really serious about water supply in this province, why aren't we seriously looking at conservation issues? There have been reports after reports, some from consultants with a very high reputation that did study the Oak Ridges moraine with respect to water supply and sewage treatment —

Proctor and Redfern. I have their references for your information.

Various agencies, government groups, the federal government, have recommended that one could conserve about 25% to 40% of our water — we're not sure, of course — through retrofitting, other techniques; there are a number. There's research done on this, reclaimed water sources etc, not just residential but industrial-commercial usages. This preferred solution document, which seems very vague, by the way, very spotty in its recommendations, says we can maybe conserve 2%. I say nobody has done their homework on this.

There has been little if any research done, serious research on environmental and cumulative impact studies on pipeline options. This is a big void, including septic systems, a big problem — over a million septic systems in this province and there's lack of consistency across the board here.

In conclusion, the haste of making an historic decision using unrealistic time frames and whose impact on the environment and health and safety has not been fully explored is a recipe for disaster. Once water and sewage are put under the control of private companies, it would be extremely costly for the people of Ontario to buy it back should privatization prove untenable. Why do we risk squandering a resource as essential and basic as water? Who owns the water, really?

I would like to call for a full environmental assessment on the project in York region rather than the class environmental assessment. I'd like to consider this Bill 107 to be re-evaluated with what I have in mind. Although I may not give specific recommendations, I think the gist of what I've had to say would indicate the direction I would like the bill to go in.

One incident — I was late in getting here; I was coming from work — I heard somebody mention York region and other privatization models: I was talking to a colleague about a private system that was brought in in I think Flushing, appropriately named, New York state, in the New York region. This private water company was called Jamaica Water and it was brought in to fix up the problems there. The company has gone belly up, gone broke, and the water supply is back in the hands of the public. Thank you very much for your time.

*Applause.*

**The Chair:** I have indicated three times that the gallery is not to participate by demonstrations of clapping. If it occurs again I'll have to clear the gallery, and I don't think anybody in this room wants that to happen.

We appreciate hearing from you, Ms Tilman.

#### CANADIAN AUTO WORKERS — CANADA

**The Chair:** We'll move now to Mr De Carlo from the CAW. Welcome, Mr De Carlo.

**Mr Nick De Carlo:** Thank you. I hope everyone has a copy of the report. Before I begin, though, I want to comment on the issue of applause from the people who are attending. It's an issue that's been raised in other public hearings I've been at, and I want to point out once again that the behaviour of people here is much superior to the behaviour I see in the Legislature itself, therefore I don't understand what the issue would be.



**Ms Churley:** You have to agree with that, Madam Chair.

**The Chair:** I do agree.

**Mr De Carlo:** That being the case, I think the people here have every right, as much as the members of the Legislature, to express their opinions.

I'm here today to express on behalf of the CAW our unequivocal opposition to Bill 107, the Water and Sewage Services Improvement Act. Rather than improving water and sewage services, this act opens the door to a fundamental attack on the quality of water and sewage services in Ontario and threatens irreversibly to alter citizens' rights of access to clean and safer water.

It is a well-known and accepted fact in the 1990s that we're facing an environmental threat from the overuse and pollution of water. At the very time when leadership is required to protect water resources, the Ontario government is preparing the groundwork to reduce regulation and inspection of water, privatize water resources in Ontario and open the door to the wholesale selloff of Ontario's water.

Our members are directly affected by water pollution. Many of them are employed in workplaces which pollute the water systems. They work in factories where they feel hazardous waste is not treated as well as it should be. They work in airports where ethylene glycol, wing deicer, is allowed to run into nearby creeks and contaminate the groundwater. They live in communities surrounding these workplaces and are concerned about their health and the health of their families. They live in places like Collingwood where our 500 members employed at the Reynolds-Lemmerz plant were very concerned about cryptosporidium, an micro-organism found in their water supply. While this micro-organism did not originate in a workplace, it is a clear example of a contaminant harmful to human health that must be controlled.

We as a union are extremely active in environmental issues, bargaining into our collective agreements environmental committees and health and safety and environmental committees so that the workforce will have a say in trying to limit environmental harm from our workplaces. But our powers are limited. We play only an advisory role to management who have the final say in whether or not protection of the environment is implemented. We believe government must play their role in formulating stringent legal requirements and strictly enforcing these requirements to ensure that any possible harm from our workplaces to our communities is eliminated or at least minimized to the greatest possible extent.

Around the world, environmentalists and strategic thinkers are advising that water scarcity could bring disaster. Water tables in the US, especially in the southwest and Mexico, are dropping. In this context, the US has plans in place for massive water diversion of Canadian waters to meet their future need for water. The free trade agreement with the US provides that once water is exported to the United States we cannot stop the flow of our water south of the border in the future, even if there are water shortages in Canada. Yet the Ontario government proposes to make water a commodity for selling, and the government of Ontario proposes to take control of water away from the citizens of the province and hand

it over to multinational corporations that have no obligation to the citizens and no loyalty to the country.

Water services have been managed and controlled by government in the public interest precisely because private control leads to abuse, high prices and lack of safety in water treatment. Yet the Ontario government proposes to go backwards in time by privatizing water resources at the same time as reducing regulatory and enforcement mechanisms and downloading responsibilities on to municipalities, many of which cannot afford to apply adequate resources to carry out these functions. While promising more efficiency, the government opens the door to higher prices and greater dangers.

In taking this gigantic step back to the future, the Ontario government casts aside the opinion of the citizens of the province. An Insight Canada poll of April 1996 found that 76% of Ontarians say that water should remain in public control. By encouraging privatization, Bill 107 ensures that the public will not be able to have a say in how water is treated and provided in this province. Our government does not announce to the people of Ontario the real intent of Bill 107. Instead, it buries the true direction in the verbiage of "improvement" and "disentanglement."

Privatization is a key issue. Bill 107 permits the privatization of Ontario Clean Water Agency-owned assets and the wholesale privatization of hundreds of sewage treatment plants and water treatment plants currently owned by municipalities. The first Ontario public health and municipal waterworks legislation was passed in the 1880s, over 100 years ago. In the 1950s the province greatly expanded its role in safeguarding water resources by enacting the Ontario Water Resources Act. An independent body, the Ontario Water Resources Commission, was created and enjoyed general supervisory and regulatory authority over water quality and water use within the province. The commission had various approval powers and pollution abatement powers and also served to finance and supply water and sewage services to municipalities.

In 1993 the Ontario government created the Ontario Clean Water Agency, which assumed the operation of the Ministry of Environment and Energy's numerous water and sewage facilities and provided financial and technical assistance to municipalities. The public interest justification for the Ontario Clean Water Agency included protecting human health, promoting water conservation, ensuring public accountability and supporting provincial policies regarding land use and development.

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Ontario has 100 years of history of improving public control over water and sewage services. Though there remain improvements to be made, the current Ontario government chooses instead to reverse the direction.

What is the record of the current Ontario government with regard to water and sewage services? Bill 26, the Savings and Restructuring Act enacted in early 1996, makes it easier for municipalities to dissolve water or public utilities without electoral assent. The Ontario government's municipal assistance program, which provided capital grants for municipal water and sewage projects, was virtually eliminated from the budget of the

Ministry of Environment and Energy, and the MOEE's 1997-98 capital budget reductions announced on April 11, 1996, slashed approximately \$142 million from the municipal assistance program, which had already suffered multimillion-dollar reductions for 1995-96 and 1996-97.

After Bill 107 was introduced, a provincial task force identified the Ontario Clean Water Agency as a candidate under review for privatization. At one time water quality in the province was routinely monitored through sampling of lakes, rivers and watercourses to build a database to track contaminants. This information was used to determine if a particular lake could withstand further cottage development, whether a watercourse could handle a sewage treatment plant and for other purposes. The number of water monitoring stations dropped from nearly 700 in 1991 to just over 200 in 1996. No surface water monitoring was done north of Barrie, where the majority of watercourses are located, for the 1996-97 work year. Very little water monitoring was done elsewhere. Sampling locations have been reduced by 80% in the Great Lakes in the past five years. The number of stations sampled dropped from approximately 500 in 1990 to 100 today.

Groundwater provides drinking water for 3.5 million people, or approximately one third of the Ontario population. Groundwater supplies account for more than half of municipal water use. Ministry staff look at approximately 2,000 groundwater contamination incidents per year and often discover faulty construction and poor maintenance of wells. These kinds of problems can result in direct contamination of the water table. In Smithville, cleanup costs of PCB groundwater and soil contamination have reached approximately \$25 million to date. Despite this, inspections of well installations are no longer being done in some areas of the province. Verification of water well records is among the lowest-enunciated priorities in the ministry's work plan.

Despite these developments, the current Ontario has chosen to downsize the Ministry of Environment and Energy. In 1996-97, 650 of 1,770 jobs in the MOEE — over a third of the jobs — have been eliminated. This ensures that inspection and monitoring will continue to deteriorate. A direction has been clearly established by the Ontario government: deregulation, reduced enforcement and privatization.

Despite Ontario government promises of "encouragement" of public ownership under Bill 107, the bill merely provides that before a municipality can transfer a water or sewage facility to the private sector, any provincial grants received for the facility since 1978 must be repaid, but without interest. This simply establishes a subsidized price for the facility and does not constitute an effective safeguard against privatization. In fact, it opens the door to it.

By transferring ownership to municipalities and eliminating capital investment subsidies for municipalities to construct and maintain these services, the Ontario government is ensuring that water and sewage services will be privatized. By allowing the privatization of Ontario's water and sewage services, when 25% of Ontario's infrastructure, including water and sewage services, are 50 years old, at bargain-basement prices, the

Ontario government ensures that standards will not be maintained and prices will go up.

I also want to raise a concern over an issue that's raised in An Act to enact the Municipal and Sewage Transfer Act, 1997 and to amend etc:

"75.2(2) The Minister of Municipal Affairs and Housing may enter into an agreement with a board of health or with a person or body prescribed by the regulations providing for the performance of the Minister's responsibilities...."

"75.3: A person or body that has responsibility for the enforcement of sections 76 to 79...."

I believe the question has to be asked, does this open the door to passing over responsibility for regulation and enforcement to private individuals and corporations?

Downloading also flies in the face of recommendations of various Ontario government bodies.

For example, the Commission on Planning and Development Reform in Ontario recommendations are in complete contrast to section 3 of Bill 107, which transfers from the MOEE to municipalities the general responsibility to regulate the construction and use of sewage systems under part VIII of the EPA.

In general, part VIII sewage systems include septic tanks, small private sewage works and other systems that do not discharge effluent directly into watercourses. It has been estimated that there may be over one million such systems located throughout the province. The problem is that without adequate soil conditions, sufficient separation distances or proper design, construction and maintenance, part VIII systems can adversely affect groundwater and surface water and result in other nuisance impacts to nearby landowners.

The Commission on Planning and Development Reform in Ontario found that there "is increasing evidence of contamination of both ground and surface water" from septic tank systems. The commission also referred to regional MOEE studies that showed one third of septic systems were designed below standards and one third were classifiable as a public health nuisance. Given the environmental and public health significance of septic systems, the commission correctly concluded that the MOEE should continue to have the primary responsibility for inspecting and regulating septic systems. This primary responsibility disappears with downloading and privatization.

Further, the cost of acquiring water and sewage treatment facilities realistically means that a few large companies will be able to purchase these facilities, raising the possibility of virtually unregulated private sector monopolies controlling water and sewage services in many areas of Ontario.

What is the experience in Britain with privatization of water? I know this issue has been raised with you many times; we raise it again. As others have pointed out, the effects of privatization of water in Britain have been numerous. They include such problems as substantial increases in water prices; termination of water services to low-income families; severe water shortages; restrictions on non-essential water uses; outbreaks of dysentery and hepatitis A; selloff of water reservoir lands for development purposes; excessive executive salaries and shareholder dividends; extensive layoffs and wage reductions;



failure to reinvest profits into infrastructure improvements, resulting in increased leakage; numerous violations of water pollution laws; and creation of integrated private monopolies.

Is this what the Harris government means by "improvement" in water and sewer services? The answer appears to be yes.

Conclusion: Bill 107 is not about disentanglement. It is about downloading and disenfranchisement. Municipalities will be forced to shoulder burdens they cannot bear. Inevitably they will sell off the services to private companies. Lack of regulation and enforcement combined with private control of water and sewage will severely restrict, if not eliminate, citizen participation in the process. Bill 107 is about profit for corporations at the expense of the environment and the citizens of Ontario.

What Ontario citizens need and want is more protection for water and sewage services. We agree with others who recommend that Ontario legislate a Safe drinking water act. This act would:

- Entrench a clear public right to clean drinking water;

- Establish standards limiting the amounts of contaminants in drinking water that may adversely affect human health;

- Establish standards that address contaminants that may cause odour, appearance or usability problems with drinking water;

- Impose a positive statutory duty on the MOEE to set and enforce drinking water standards;

- Require public and private water suppliers to periodically sample, monitor and report upon the quality of drinking water;

- Promote research into alternative water treatment technologies that eliminate organic chemicals in the water treatment process;

- Establish appropriate prohibitions, penalties, and investigation and enforcement provisions;

- Require public and private drinking water suppliers to provide timely public notice of operational problems, failure to carry out prescribed testing, or violations of prescribed standards; and

- Create a statutory cause of action permitting individuals to sue violators of the act or standards.

We need to move forward in protecting the environment and our water supply, not to go backwards. Bill 107 is going backwards.

**The Chair:** Thank you very much, Mr De Carlo. Unfortunately there's no time for questions, but we thank you for taking the time to come before the committee today.

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## ONTARIO NEW HOME WARRANTY PROGRAM

**The Chair:** The presenters from the 4:45 slot have withdrawn. Is Carole Bennett here, please? Yes? I'm glad you're here. Welcome.

**Ms Carole Bennett:** I want to thank the committee for the opportunity to present on behalf of the Ontario New Home Warranty Program around certain aspects of Bill 107.

The Ontario New Home Warranty Program is a private, non-profit corporation which was established in

1976 by Ontario's home builders to provide an insured warranty for new homes. In 1977 the province of Ontario designated the corporation to administer the Ontario New Home Warranties Plan Act to ensure all new homes were provided with warranty protection.

The corporation is self-funding and self-insuring. All our revenues are derived from fees from the registration of builders and vendors of new homes and the enrolment of new freehold and condominium units in the plan.

The warranty program is interested and directly concerned in the proposals in Bill 107 because the definition of "home" in the Ontario New Home Warranties Plan Act requires warranty protection for private sewage disposal systems installed by a "builder," as defined.

Our past experience with these systems has not been good. In the early 1990s the warranty program took steps to evaluate the situation and address the risks it faced because of the failure of these systems in new homes. In 1991 the warranty program identified concerns for the undue liability to which the corporation's guarantee fund could be exposed because of the inability of the existing approval processes to ensure that private sewage disposal systems functioned adequately.

Information indicated that the incidence of claims paid by the warranty program for repair and replacement of these systems was rising. In addition, some significant failures in subdivisions in various parts of Ontario, principally in London, in Halton and in Peel, alerted the warranty program to increased potential liability, and in fact the risk of having to build out significant portions of sewage systems.

As a consequence, in 1992 the warranty program commissioned Paragon Engineering to study the requirements, approval processes and failures of private sewage disposal systems throughout Ontario. The study identified that although MOEE, local health units and conservation authorities were depending on the jurisdiction responsible for approving these systems, there was a lack of uniform application of the requirements across the province.

The study also investigated the causes of septic system failures across Ontario and found that many of the system defects could have been prevented. In some cases the systems were designed and installed improperly. In others, inaccurate soils information was responsible. As well, homeowners' actions were to blame for a number of problems. These conclusions matched our own experience.

The warranty program's own claims data were also revealing. From 1991 to 1993 septic system claims represented about 10% of all freehold construction-related claims, and believe me, the number of homes on septic systems isn't anywhere near 10% of the overall enrolment of homes in any given year. In 1993, for example, we paid out over \$325,000 for septic system claims compared with \$4 million for all construction-related claims in freehold homes.

Remedial costs are high because of the need to replace contaminated soil, the associated hauling and tipping fees, the engineering fees we have to pay out in order to come up with appropriate solutions, the replacement of the system, of course, and the restoration of the property

back to its original condition. From 1991 to 1993 the average cost of claims per home increased from \$8,400 to \$14,200. This was borne by the warranty program, but there are many others: homeowners who have to bear those costs themselves when they aren't protected by the warranty.

The frequency ratio of all warranty claims, both construction and financial loss, is normally about 24 claims per 1,000 homes enrolled. But with homes on septic systems, the estimated frequency we found during this period was 42 claims per 1,000 homes enrolled, so almost double what we would normally expect. It was apparent that we had to take certain steps to protect the guarantee fund.

These statistics reflect our experience only. They don't include all the costs incurred by builders at that time who serviced their own problems without involving us, nor do these statistics include homeowners who had to take on corrections because they were in older homes, seasonal dwellings or whatever and therefore were not brought into the equation either.

After evaluating the data, the warranty program adopted several recommendations, including publications for builders around design and installation requirements; maintenance publications for homeowners which go to all new homeowners on these systems; training for builders; but by far certainly the most controversial but most significant initiative was proof of professional certification of the design and installation of all systems in homes enrolled with the warranty program.

The final proposal, professional certification, added between \$1,000 and \$2,000 to the cost of the house. But given the unpredictable nature of the claims at that time we felt it was necessary, and we implemented our builder bulletin 33 to require certification proof from all registered builders who were building these kinds of systems. Along with this, we provided province-wide training.

While the warranty program was taking these steps to correct the problems, other organizations were doing the same. MOEE contracted with some new approval authorities for better implementation of its requirements. Existing approval bodies tightened up their approval and inspection procedures, and some, like Waterloo region, had already moved to a professional certification model in the late 1980s. Others, like the Upper Thames Conservation Authority, took over responsibility for septic system approvals and inspections with much better procedures and policies than their predecessors, and they also implemented new training programs for their clients: builders, installers and so forth.

All these actions have had an impact. The warranty program's claims have dropped significantly. Claims costs in 1995, for which I have the most recent data, dropped to just under \$160,000. The average cost per claim is also coming down to just over \$10,000 per home. More important, the frequency ratio has dropped dramatically to 10 claims per 1,000 homes enrolled from the 42 per 1,000 I had described earlier.

As a result, in 1996 the warranty program reduced its certification requirements for builders from the whole province, which was affected, to only four regions: Halton, Ottawa-Carleton, Peel and Wellington where

there are still above-average claims. With this kind of improvement, though, it was our intention and certainly our goal to eliminate the certification requirements of builders altogether within the next few years. However, Bill 107 gives us some pause.

There is much to commend, we believe, in the bill as far as the septic system conditions are concerned. We endorse MOEE's continued responsibility for establishing appropriate and stringent standards across the province. We heartily support the certification and training requirements for installers and inspectors. We also endorse the concept of one-stop shopping for builders seeking permit approvals and inspection services for the homes they are building. It's especially timely as the new home market begins to recover and meet the pent-up demand after a very, very, long recession.

However, we have reservations about the practical implications of moving approvals and inspection to the local municipality. We do not want to see a return to the performance of the early 1990s when, in that case, almost 50 jurisdictions were having very mixed success in administering the part VIII provisions of the Environmental Protection Act. The performance has improved dramatically, as I have already described.

We have concerns now, going from 50 jurisdictions or close to, up to over 800, that we will be right back into the same mess we were in in the early 1990s and that we will begin to see an increase in septic system failures again because of lack of experience, increased workloads, lack of other resources and the variable interpretations that are all very real situations.

For new home owners there may be some protection through the warranty, but others will not be so fortunate. We believe that on the whole the current approval authorities are performing satisfactorily. We will continue to monitor our claims data and address liability issues accordingly. We will continue to take the necessary steps to protect the guarantee fund while we balance the entrepreneurial needs of the building industry with consumer protection rights and the need for environmental protection. But in the model proposed in Bill 107 we believe, and it is our hope, that those currently performing an effective approvals and inspection function will continue to do so.

**Mr Galt:** The point you made that we heard earlier from a delegation from Ottawa-Carleton, which level of municipality should be delivering it, is one we've struggled with as well. The idea of one window for the customer, one-stop shopping, so to speak, has a lot of merit. At the same time, as you point out, there are some 800 municipalities that you would have to work with and that we would have to work with and so on, and maybe the health units if they use health units to carry out the actual inspections. We're struggling with that one. If you have any more input I'd love to hear from you. We're talking with the large systems on the upper tier, the small systems, single-house and lower tier, and then in the north MMAH looking after it there.

It's a real struggle. You're sort of damned if you do one and damned if you do the other. It's really tough to come up with what's going to be the best for all con-



cerned. We'd look forward to anything else you have along that line.

**Ms Bennett:** I would be happy to provide the committee with detailed information about our claims. The Paragon study, which I described in my remarks and so on, may help.

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**Mr Galt:** The information you had there on claims is quite an eye opener and certainly reinforces the need to train and certify or license the installers, more than just the inspectors.

**Ms Bennett:** Absolutely. Our belief is that things are just getting going right now and we would like to see things continue as they are because we feel they are finally on track.

**Mr Galt:** Super. Thanks very much.

**Mr Agostino:** Thank you for your presentation. I think you've brought a perspective that we have not really talked about, with that particular impact, through our deliberations. Actually it's the first presentation from that angle in the three days we've had, so it was very enlightening for myself and I'm sure for most of the committee members.

What do you see as the fallout of the recommendations you made about the process and the control, the jurisdiction of this? What do you see as the fallout or the downside if the recommendations are not accepted and you end up with the situation that the bill stands as it now is?

**Ms Bennett:** If claims go up again for us, then we will take steps with builders and probably have to go back to requiring greater certification requirements. As I said, right now we're down to requiring proof of certification by a professional engineer in only four parts of the province, and we had every expectation that the improvements that are going on, particularly in Ottawa-Carleton and in Wellington, would reduce that because we do a five-year rolling claims average. If we see claims going back up, we will then have to bring back the certification requirements, so that means again added cost to the house.

**Ms Churley:** First of all, Madam Chair, I just want to remind people that pesticide staff have been cut from 31 to 17, or 55%, and aquatic toxicology and ecosystem staff cut from 28 to six, 21%.

**Mr Agostino:** That's shocking.

**Ms Churley:** Of course these impact on water supplies. I just want to say to you that it's nice to see you, Ms Bennett. As a former Minister of Consumer and Commercial Relations I remember this issue very well, and some of the controversies with AMO around it, and we were able to work through it.

I think your presence here today is extremely important because there are so many aspects to these kinds of new

legislation that quite frankly government members and opposition often don't know about. You've brought a very important perspective today in terms of the importance of making sure that — and I like your recommendation, "It's working the way it is." I just wanted to thank you for coming forward with that perspective because I remember how difficult that issue was to resolve.

**Ms Bennett:** Yes, we both have good memories of that time.

**The Chair:** Thank you very much, Ms Bennett. We appreciate you taking the time to bring your perspective to the committee.

Colleagues, before we adjourn today we have one matter of business, and that is to determine the time when the amendments for this bill will be presented to the Clerk's office. A suggestion has been made that on Friday, April 25, at noon would be an appropriate time. Any discussion?

**Mr Galt:** A week Friday.

**The Chair:** And with clause-by-clause on April 30.

**Ms Churley:** The deadline for getting them submitted would be Friday — what was it?

**The Chair:** April 25 at noon.

**Ms Churley:** Okay. A week this Friday. I think that's fine.

**Mr Galt:** That gives us time to get them in and time to have a look at them.

**Ms Churley:** Yes.

**The Chair:** I see agreement on that then. So Friday, April 25 at noon, amendments must be presented.

**Mr Agostino:** Just one quick question. On a positive note, I've had a chance on a number of committees in the time I've been here to look at briefing material and I want to thank the ministry staff for preparing what is really an excellent briefing book. I think the information contained, the relevance and all the background — while we may not agree with the contents of everything in here, as a member of the opposition I'm certainly quite pleased with the material that was provided and the amount of information that was given to us in our briefing books. I think it was well done.

**The Chair:** That's a very kind compliment. I'm sure they'll appreciate it.

**Ms Churley:** And they're a little bit tired too, so we doubly appreciate all the work the clerks are performing here and I'd like to thank them.

**The Chair:** That's very nice. With that I'd like a motion to adjourn and we could reconvene on April 21 after routine proceedings.

*Interjection.*

**The Chair:** Oh, we don't need a motion. Then we adjourn.

*The committee adjourned at 1706.*

## STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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Mr John R. O'Toole (Durham East / -Est PC)

Mr Jerry J. Ouellette (Oshawa PC)

Mr Joseph N. Tascona (Simcoe Centre / -Centre PC)

**Substitutions present / Membres remplaçants présents:**

Mr Toby Barrett (Norfolk PC)

Mrs Julia Munro (Durham-York PC)

**Clerk Pro Tem /**

**Greffière par intérim:** Ms Donna Bryce

**Staff / Personnel:** Mr Lewis Yeager, research officer, Legislative Research Service



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**Legislative Assembly  
of Ontario**

First Session, 36th Parliament

**Assemblée législative  
de l'Ontario**

Première session, 36<sup>e</sup> législature

**Official Report  
of Debates  
(Hansard)**

**Monday 21 April 1997**

**Journal  
des débats  
(Hansard)**

**Lundi 21 avril 1997**

**Standing committee on  
resources development**

**Comité permanent du  
développement des ressources**

**Development Charges  
Act, 1996**

**Loi de 1996 sur les  
redevances d'aménagement**



Chair: Brenda Elliott  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
RESOURCES DEVELOPMENT

Monday 21 April 1997

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU  
DÉVELOPPEMENT DES RESSOURCES

Lundi 21 avril 1997

*The committee met at 1549 in committee room 1.*

## DEVELOPMENT CHARGES ACT, 1996

LOI DE 1996 SUR LES  
REDEVANCES D'AMÉNAGEMENT

Consideration of Bill 98, An Act to promote job creation and increased municipal accountability while providing for the recovery of development costs related to new growth / Projet de loi 98, Loi visant à promouvoir la création d'emplois et à accroître la responsabilité des municipalités tout en prévoyant le recouvrement des coûts d'aménagement liés à la croissance.

ASSOCIATION OF MUNICIPAL CLERKS  
AND TREASURERS OF ONTARIO

**The Chair (Mrs Brenda Elliott):** Good afternoon, ladies and gentlemen. I call to order the hearings for Bill 98, An Act to promote job creation and increased municipal accountability while providing for the recovery of development costs related to new growth. We apologize for our lateness, but duties in the House take precedence, I'm afraid.

Our first presenters this afternoon are Jim McQueen, Cathie Best and Jim Sangster. Would you please come forward. Welcome. Would you like to introduce yourselves and your association for Hansard. You have 20 minutes for presentation time. That includes your presentation and questions from the three caucuses.

**Ms Cathie Best:** My name is Cathie Best and I'm the vice-president of the Association of Municipal Clerks and Treasurers of Ontario. Currently, I'm the director of the clerks division for the city of Etobicoke. With me are Jim Sangster, treasurer of the town of Haldimand, and Jim McQueen, past president of the association and director of corporate services for the town of Milton. We're all current AMCTO members.

AMCTO is the largest voluntary professional association for municipal government managers in Canada. The association has been in existence since 1937. Our letters patent were first issued by the Ontario government in 1962. Our current membership is over 2,500 municipal officers, of whom about 2,200 have obtained formal certification from AMCTO. Our members are represented in approximately 93% of the municipalities in Ontario.

Clerks and treasurers provide the professional expert administrative support required for the efficient, continuous and professional delivery of municipal services. Clerks and treasurers are akin to the non-partisan heads of departments in provincial and federal government administration, where a neutral expert public service is

central to effective administration. We appreciate very much the opportunity to appear before you today and put our views on Bill 98 before you and on the public record.

There are numerous issues that AMCTO could raise in regard to Bill 98. However, we will not inundate you with all our detailed concerns. Rather, we've provided you with a separate written submission that identifies AMCTO's issues and details our recommendations. We would like to take this opportunity to raise our priority issues and recommendations in order to make this presentation more digestible and to fit into the time we've been allotted.

Before commencing with our concerns and recommendations, we would like to emphasize that in general AMCTO believes that municipalities have used the authority granted to them in the current act in a responsible manner. AMCTO believes that the charges imposed by municipalities have not had a significant impact on the quantity of housing construction or the cost of housing to the home buyer. In fact, many municipalities have chosen to impose only a percentage of the development charge that they have had the authority to levy. The current act provides this flexibility, while not inhibiting the ability of the municipality to address unique situations.

Bill 98, however, reduces municipal flexibility to finance growth-related service requirements and in a number of situations will impose additional costs on the citizens of municipalities, to the benefit of the development industry. Furthermore, there is no mechanism to require developers to pass on the savings from development charges to home buyers and the development industry has given no guarantee of an intention to do so. As a consequence, there is little likelihood that Bill 98 will result in lower prices for new housing. The market, not development charges, determines the price of housing.

Having said that, AMCTO believes that the single most significant aspect of the bill for municipalities is the compounding impact of several of the proposed changes. The changes in the method used to establish service levels, the application of uncommitted capacity, the required payments for credit that apply to ineligible services, the statutory minimum contribution provisions and the elimination of some services from the development charge calculation are factors that each on its own would have a significant impact on municipal financing of growth-related services. When compounded, these changes will place significant pressure on the property tax, to the benefit of the developer or builder.

The first of our issues relating to specific sections of the proposed bill involves the requirement that municipalities reimburse the credit holder for outstanding credits related to ineligible services. These payments would be



required within 170 days after the bylaw under which the credits were given either expires or is repealed. The moneys to pay these refunds must come from a source other than the development charge reserve fund.

This creates a situation in which municipalities, having entered into agreements to provide facilities in exchange for development charge credits, are now forced to assume debt, utilize reserves or increase taxes to cover these mandated refunds to the credit holder. These payments are due within six months of Bill 98 coming into force. The issue is exacerbated by the fact that debentures are not a source of revenue that can be utilized for this purpose. This will probably place some municipalities in a position of financial hardship. AMCTO believes that these agreements were entered into by municipalities and developers in good faith and that they should be honoured.

Therefore, AMCTO recommends that the bill be amended to remove any retroactivity by indicating that its effective date is the date of its proclamation or, alternatively, the date on which it was tabled for first reading in the Legislature; or that the current act continue to apply to all municipal development charge bylaws and agreements that were in force prior to the introduction of Bill 98 for the term of the bylaw or until the enactment of a new bylaw under the Development Charges Act, 1996, whichever occurs first.

The second issue we want to raise relates to eligible services. Just the fact that Bill 98 lists a group of services or facilities that are ineligible would suggest that all other services are eligible to be included in a development charge. Bill 98 also provides the minister with the ability to prescribe other ineligible services.

AMCTO is deeply concerned that the minister could at any time, by regulation, deem certain critical services and facilities ineligible. This could potentially jeopardize a development proceeding or affect agreements and financing arrangements that were entered into in accordance with the current legislation and regulations and with the agreement of all parties to the arrangements.

From my personal perspective, this ability to add ineligible services by regulation could also pose financial difficulties either to the municipality or to the developer. I believe that any ineligible services should be specified up front in the act and that any changes should require an amendment allowing for public input and be subject to proper transition procedures.

AMCTO believes that there are certain core services that are absolutely necessary for development to proceed. These include roads, sewage and waste water treatment, water and hydro. Given the need for these services to be available before development commences, and considering the copayment provisions included in Bill 98 in conjunction with reduced provincial grants and increased responsibilities and costs, AMCTO believes that these development-related essential services must be treated in a unique manner within the legislation.

As such, AMCTO recommends that the Development Charges Act, 1996, be amended to include a list of eligible services. Such a list should include, but not be limited to: sewage and waste water treatment systems and facilities, water treatment and distribution systems and

facilities, roads, transit services and facilities, fire and police services and facilities, hydro production and distribution facilities, solid waste management facilities, recreation facilities, libraries and parks.

AMCTO also recommends that specific services be exempt from the copayment provisions of Bill 98, including but not limited to sewage and waste water treatment systems and facilities, water treatment and distribution systems and facilities, roads, hydro production and distribution facilities.

Furthermore, the association recommends that Bill 98 be amended to provide that any agreements entered into in accordance with the act will be immunized or grandfathered from impacts arising out of future legislative or regulatory change.

The third issue that we'll raise involves service levels. Specifically, Bill 98 provides that service levels for the purpose of determining the amount of a development charge must be no higher than the 10-year average for each service included in the development charge. This approach fails to take into account factors that affect service level standards, including changes in provincially mandated standards, changes in business approach, services that are new to the municipality, such as sewer and water, and recent growth situations or projected growth situations.

Each of these factors, alone or in combination, could impact on required service levels and costs and jeopardize development and municipal financial stability. In reality, the service level issue should be a non-starter since many municipalities set development charges at a percentage of the allowable charge. Municipalities generally have not selected peak service levels as provided for in the current act. Most municipalities use existing standards as the basis for their charges. At the same time, the current act does allow municipalities to address specific needs or regulatory changes when establishing service levels.

Therefore, we recommend that service levels be set at a level no greater than either a 10-year average or current levels, at the discretion of the municipality. The exception to this would be situations where a provincial act or regulation requires a higher level.

The fourth and final concern AMCTO will bring to your attention today relates to the calculation of capital costs. It is our understanding that Bill 98 would discourage municipalities and their citizens from raising funds to cover municipal contributions towards projects to which development charges apply. Community fund-raising and similar types of contributions would likely be considered as revenues under subsection 5(2) of Bill 98. As such, these funds would go to reduce the developer's charge rather than being applied directly to the municipal cost.

Therefore, AMCTO recommends that community fund-raising efforts and similar types of contributions be used exclusively as contributions to the municipal component of a facility or service to which a development charge is being applied.

1600

AMCTO is of the opinion that the development charge process has served well the citizens of Ontario, the development industry and municipalities since its inception in 1989. The amendments proposed by AMCTO

serve to maintain many of the positive aspects of the Development Charges Act, while recognizing the provincial government's interest in promoting economic growth and job creation through the development industry.

What we have addressed today, in the interests of time and concision, are only our major concerns and recommendations regarding the proposed legislation. We have prepared a fairly lengthy list detailing issues already raised with ministry officials and supplied to you today.

It should be emphasized that AMCTO fully recognizes the need for municipal reform. Municipalities are not exempt from the paradigm shift that all governments and the private and public sector are confronting. AMCTO would like to be actively involved in the reform process. Therefore, we look forward to appearing before this committee again as the process continues to unfold. If you wish to hear our views on any aspect of the reform process, we hope you'll contact us. We thank you again for your attention.

**Mr John Gerretsen (Kingston and The Islands):** One of the things we've heard particularly from the builders and the development industry is the fact that a number of municipalities have abused the powers the current act gives them. They keep citing the notion that museums and expensive city halls have been constructed as a result of the act that's currently in operation.

Do you have any comments on that? Do you agree with that, or is it your assessment — you represent a fair number of municipalities, not all of them, across the province — that this has not been the case, in other words, the money has not been used for so-called soft services?

**Mr Jim Sangster:** Granted, in some municipalities it has been used for those types of facilities, but I think for the most part across the province it has been used for the other items that are currently included in the act that are not so much what you'd look at as enhanced services or special services to benefit a municipality directly, as opposed to benefitting the residents of the municipality.

I believe most municipalities have been very conscientious in the application of their development charge funds. In the studies that went into those initial development charge bylaws, I would say, as a Treasurer in a municipality that is relatively small, most of the municipalities have actually implemented a development charge that was much below the level that could have been substantiated through our initial studies, which were subject to appeal and which eventually were implemented.

**Mr Gerretsen:** That's my understanding as well. Do you have any idea, then, as to why the government feels it's necessary to bring in this kind of legislation at this time, when most municipalities aren't even using it to the fullest extent that they're currently allowed to?

**Ms Best:** Our intent here this afternoon would basically be to deal with the legislation before us, and not the reasons for which it was brought forward. We can reiterate that the studies and the surveys that have been undertaken have shown that municipalities are not using the peak levels and have not been, in most of the instances throughout Ontario.

**Mr Gerretsen:** Very well said, from a staff viewpoint. Anyone else?

**The Chair:** Very briefly.

**Mr Mario Sergio (Yorkview):** I have one brief question. When we opened up the hearings recently in Oakville, in answer to a question, the minister said that this will be saving new home buyers some \$5,000 a house, based on a \$160,000 price. Do you have any comment? Do you really believe that is going to happen? How are you going to pass this on to a new home buyer?

**Ms Best:** In my speech I advised that it was the market that determined the cost of housing; it's not the development charges legislation. It's through the frugality of municipalities. Municipalities realize that development is a bonus to them, and they are looking for development. It's to their detriment to take peak levels or to abuse the actual legislation, and they haven't traditionally. So it would be the market that would be setting the price of the housing and not the legislation.

**Mr Sergio:** Hazel McCallion says unless —

**The Chair:** Sorry, you must excuse me. Mr Pouliot.

**Mr Gilles Pouliot (Lake Nipigon):** As the process continues to unfold, and you've mentioned that so rightly, it goes to the very heart. Last week some of us were travelling the province to listen to presenters under the auspices of Bill 106, the assessment and reassessment. Some of our colleagues will parallel being subjected to the fascinating world of sewer and water via the water and sewer act. Today it's Bill 98, and now I begin to understand what you say when you say, "As the process begins to unfold."

If I were you, madam, with the highest of respect, and maybe you've already done this, I would look at the governance vis-à-vis receivership, because I'm wondering — you must — where is this all going to stop? It's happening so quickly. Maybe some people have overestimated the ability of society to assimilate changes, digest them, while people wish to have some changes.

I have one question. I'm a homeowner in your municipality, and I see that you have a new subdivision. I know, because I've read, that the developers no longer have the same responsibility to pay for those services. Under general purposes, am I right in assuming that as a present homeowner — not as a newcomer in the subdivision, but as one established there — I will pay for a portion of the new subdivision? If not, tell me how I will avoid it. In other words, do you have a choice?

**Mr Jim McQueen:** Under the draft legislation, there is strong feeling that the existing taxpayer in all communities will help pay for development in the future because cosharing legislation is being recommended. There really isn't any way of avoiding those additional costs that will come through the tax levy, other than possibly looking at reducing service levels, which the communities to date have really wanted. That's one solution, I suppose, to really drop service levels in municipalities.

**Mr Pouliot:** But when I buy a house in your community I've scanned, I've looked, I've asked, I've listened. Am I not buying a little piece of the museum? Am I not buying the trees, the environment, the location, the location, the location at the same time? Don't you see yourself or catch yourself, and the developer too, in a catch-22 situation, where if you don't provide those amenities — and I'm not talking here about gold-plated;



I'm talking about the basic things one wishes to have. I want to be like the others. I move to your place, and if there's no library, no new museum because you don't have the money to provide them, the price of houses is not as attractive, the community is not as attractive, I might go elsewhere.

A cynic mentioned to me — and I don't want your comment; this would be imputing motive —

**The Chair:** We need a question.

**Mr Pouliot:** — that it's "pay back friends" time. They don't know how to go about it, and no one believes the developer will pass the savings along to Gilles Lunchpail. Am I right or wrong?

**Mr McQueen:** We believe that we will not see the so-called savings passed along to homeowners, based on the draft legislation that's in place today.

1610

**Mr Jerry J. Ouellette (Oshawa):** We as politicians, from all parties, are in a unique and fortunate or unfortunate situation, depending on which way you look at it, in that we hear from all sides. We hear from the developers, where they say that the sky is falling, the municipalities tell us that the sky is falling etc.

When we sat down with them, I asked them all the same question. I said, "Why haven't you sat down together to come to some positive conclusion on what you agree or disagree with?" Why hasn't your organization, at least the last I checked with the developers in my area, sat down with them to talk about this legislation and to come forward as a group on what you agree or disagree with?

**Ms Best:** The responsibility of actually sitting down with the developers is the municipalities' and I think the municipalities have had a good history of sitting down with the developers through the process of setting up their bylaws under the current legislation.

**Mr Ouellette:** It hasn't happened at all in our area.

**Ms Best:** With our association, we're responsible to the membership, which is the member municipalities. Those are the ones we're representing.

**Mr Ouellette:** So don't you think part of that responsibility, rather than just internally, is to go externally and get input as well? Wouldn't it be advisable to sit down with some of the developers to find out why they would take that stance?

**Ms Best:** Why the developers take the stance that they're not contributing to this?

**Mr Ouellette:** Sure.

**Ms Best:** We haven't had the opportunity to do that and again, we would be more responsible to our municipalities than to the developers' views. They have their developers' association as well that would come forward.

**The Chair:** Our time has expired. Thank you very much for coming before us this afternoon to bring us your advice. We appreciate it.

#### ONTARIO PROFESSIONAL PLANNERS INSTITUTE

**The Chair:** I'd now like to call the representatives from the Ontario Professional Planners Institute. Welcome. If you would please introduce yourselves for Hansard.

**Mr Bernie Hermesen:** My name is Bernie Hermesen. I'm a planning consultant. I'm also on the council of the Ontario Professional Planners Institute. With me today is John Livey, who is a past president of our institute, as well as the commissioner for York region.

The Ontario Professional Planners Institute represents over 2,200 practising planners in the province and our members work for government, for private industry, for universities and for special agencies and do a wide range of planning from rural to urban to community development planning.

The brief we have submitted to you today was prepared by our public policy committee and approved by our council. First of all, by way of general comment, I would just like to say that the province of Ontario encourages well-planned growth and development and we believe that development charges are an important means of funding the infrastructure needed to accommodate this growth and development.

John will now make a few comments and then I'll close with a final comment.

**Mr John Livey:** I'm going to address my remarks to the scope of services and to the determination of the development charges sections of the bill.

First, on scope, it's helpful to have a provincially mandated list of eligible and ineligible services. It adds certainty and predictability to the process. People can understand what is chargeable or not. What's on the list should be the essential elements of a growing community's capital investment. It's not its operating costs, but its capital investment, attributable to growth, so that the new residents and businesses are a part of the development of a new community.

Establishing a list focuses debate on, what are the essential capital projects for a new community? What makes a new community attractive to new investment and to its citizens? Planners across Ontario are saying that a diminution of the attractiveness for economic development of communities by eliminating certain essential elements like hospitals, the extra parkland and some of the tourism items are going to diminish its economic potential.

I'll give you an example in York region. Right now Georgina, which charges a fairly low rate of development charges relative to other rates in York region, has a shoreline that's largely developed by old cottages built back in the 1930s, 1940s and 1950s, and it's largely inaccessible to the population. Right now a portion of their charge is trying to buy parkland, in addition to the 5% in the Planning Act, for public access. That should make that community more attractive to investment and should make the community more attractive to new residents.

While the province has been very helpful and the bill is very helpful in defining the scope, there are some items that have been left off the list that are going to diminish the attractiveness of communities for investment and locations.

In determining the development charges, there are no provincial standards established for the level of service, unlike the other list, where it's very clear what's on and what's off. The only limitation is that there be capping to

the average level of service in the preceding 10-year period.

What is established is a process for calculating the charge, plus a developer's or new homeowner's discount for selected services. Section 5 of the act requires municipalities to first estimate the amount, type and location of development, estimate the need for services created by that development — not to exceed that 10-year average — subtract uncommitted excess capacity, subtract the benefit to the existing community and then calculate the amount of capital projects that will be required to meet the need attributable to growth. So far so good. It's complicated, it's time-consuming and it relies on extensive background documents, but it's fair and it's appealable.

Then the act goes on to provide the discount which kicks in by reducing the charge, in some cases by 30% or 10% or, as I understand, possibly zero for hard services. Had this discount been an alternative to the calculation of the capital costs for a typical development as an alternative to that calculation, that would have been one thing. But in essence, it's a way of establishing the benefit beyond the calculation that's documented in the calculation in the background studies. So you have a very thorough calculation and then you have a further discount.

In our view, this is going to cause some problems. I want to talk about transit for a minute. Some discount rate is going to be applied, presumably, to transit, although it probably should be a hard cost with a zero discount. Here the calculation on the level of service under the bill causes all kinds of odd problems.

First, once the future demand for transportation in a community to and from different places is calculated, minus the excess capacity that's available, the question is, what will the modal split, the amount of transit usage versus road usage, be in a municipality? Will it be the 7% transit split that I now enjoy in York region? Or will it be the 24% to 30% transit split that we hope we will achieve in York region in 2021 when the population has doubled to a million people?

Either way, new facilities will be required: new roads, new bridges, new buses, new busways. The most economical way is the higher transit scenario. It's the cheaper, long-term, developable-charge scenario and it's cheaper because we don't have to build an excessive amount of extra road widenings and extra roads in York region. Instead, we can use the existing transit infrastructure, the roads, plus we have to buy some buses.

But the methodology is forcing us to use the 10-year average, the preceding average, to calculate the charge, and in effect we're calculating the charge on the basis of history rather than informed foresight. Add the developer's discount into this and you can ensure that we'll be developing in York region on the basis of a roads-only scenario and that will be more expensive, with higher charges to homeowners in our new communities.

The use of the 10-year average level service is at the root of this problem. UDI will have presented to this committee examples of excessively high service levels in some municipalities to argue for the discount. Unfortunately, this only gets them at the excessive standards in

a backwards way, rather than establishing caps on service levels eligible for development charge funding.

What's the right level of service? What's the public debate about right levels of service for different things in our communities? Yes, there would have to be a geographic variation in the standards to recognize urban, rural and urbanizing situations. But this at least would be a direct and understandable public debate on the issue.

Right now, a municipality with the highest service level can continue it with the discount for some services, while a frugal municipality is limited to its historic level of capital spending minus the discount. I'll turn it back over to Bernie.

**Mr Hermesen:** Our final comment deals with level of service. There is a provision in the bill which would limit the level of service to what has been provided over the last 10 years in a municipality. Our concern is this provision may particularly impact on smaller rural municipalities which have traditionally not had urban-type services.

However, they may be faced with growth pressures where they are approaching a threshold demanding new service requirements. For instance, where they may not have had sewage treatment or where they may not have had municipal water systems and distribution systems in the past because they hadn't reached a threshold of growth to require those services, they may now be faced with having to provide same.

The provincial policy statement approved in May 1996 encourages full sewage and water services not only for urban areas but in rural settlements, and perhaps there's an opportunity here to adjust the bill to recognize this unique circumstance, to allow our rural neighbours to also benefit from the Development Charges Act.

**1620**

**Mr Pouliot:** As I scanned your brief, your presentation, I began to try to differentiate — I sense some anxiety and I need your help; you will correct me — the hard from the soft services. You mentioned transportation and I have a question vis-à-vis transportation.

For instance, while being asked to provide that "essential service" in a new subdivision, if the province, on hard stock, on capital, was to lessen its contribution in lieu of the traditional 75-25 share, 75 being the provincial responsibility, you would now be asked to share further in that "adventure" by forking over 50-50, 50 cents on the dollar. Then, on the fare box, since no municipal transit system breaks even, the province would tighten the vise to squeeze a little more. Then you'd say, "My God, where will it stop?" But while it doesn't stop there, in terms of your supplementary allocation, the province would again cut another 10%, or eliminate it.

You see, this Bill 98 does not work or is not applicable in isolation. It is webbed, it is meshed with other bills that are advancing on many fronts, and they really have to be factored in. Then we have to see the implementation, the results of all this, in order to be able to cost it. So I must caution, with respect, that when you look at Bill 98, you must work it in conjunction. It's a connected bill. It's directly related with other pieces of legislation that are coming through.



I sense that you're asking a lot of questions, yet you fail to come up with answers at this stage. Implementation is quite near. At the end of the day, the majority shall have its way. That's what we fear too, as we try to mesh and blend the legislation. We'd welcome your comments.

**Mr Livey:** I don't think we're here to talk about anything but Bill 98. I do recognize the point that these things are related. Our point on transportation is that transit is transportation, and it should be treated like roads, whichever way the downsizing, the disentanglement, goes. It's difficult with all these things up in the air, obviously, but we're trying to do our best on this bill.

**The Chair:** Dr Galt, do you have a question?

**Mr Doug Galt (Northumberland):** No, I don't.

**The Chair:** Mr Ouellette, then, please, then Mr Hardeman.

**Mr Ouellette:** I'll be brief. I see the PA would like a question.

Recently I sat in on a meeting — just today, actually — where one of the local municipalities wants to make it more attractive in their community, to use your phrase, and the municipality wants to pay the \$1.5-million fees in order to attract a junior A team to the municipality, along with building a new arena for the team. Where does it end, when you attract, and where does it begin? Where do they draw the line? Do you think that would be fair?

**Mr Livey:** If I could, I think this is a really good question in the sense of what is the right level of service in a community. In my municipality, for example, Vaughan has five swimming pools for 130,000 people. Markham, at 160,000, has four swimming pools. Presumably, if you look across the GTA, you'll find that in urban municipalities the Markham standard's probably the right one, that probably Vaughan's got one too many swimming pools.

So you can go through each of those charges and determine what the average level is. There are some abuses, and maybe a junior A team would be seen as an abuse if they had already established rinks and they were simply gold-plating them.

**Mr Ernie Hardeman (Oxford):** Thank you very much for your presentation. My question is somewhat in the same vein as Mr Ouellette's, the issue of level of service and how one finds the right level that should be allowed in the development charges.

In 2.4 in your presentation you talk about the 10-year averaging being inappropriate because it will prohibit rural municipalities from increasing their level of service. My question really would be, would that not be appropriate? In fact, should rural or any other municipalities be allowed to use the development to upgrade the level of service? If the level of service is here and the new development is up here, at some time in the future is not that new development then going to be asked to pick up the cost of upgrading the other residents in the municipality? So is it not fair that they also cover some of that upgrading for the original? It would seem to me still appropriate to have a level of service, regardless of how low that community presently is.

**Mr Hermesen:** The one instance I was involved with, for example, was a rural township with a number of settlement areas. There was one settlement area, though, that was going to experience growth. It was going to go from 800 people to 2,000 people. The township's consultants and the development's consultants said: "We're going to need a proper water supply. We can't just get by with what we've got. We need a better level of service." This was recognized by the developers as well. At that time, and this was a few years ago now, we used the old Development Charges Act to say what the right share was for the people who already lived there, because with the new system came the opportunity to hook up, so there was a benefit to them as well, and what the right share was for the new development. It was all worked out.

The other side of the coin is, without it we wouldn't have had a good, workable tool to help the industry move forward. It would have been: "How are we going to fund this? Every person for themselves, or does the existing taxpayer have to take a big bite to move forward here?" There has to be some balance.

**Mr Hardeman:** Finally, on the question of how we should fund it, my concern is that under the present structure it becomes too easy to say, "Let the new homeowner coming into the community pay the bill, because they are not our present community, so we can get the funding from outside our community to build the higher level of infrastructure." I think that's somewhat unfair. How should we fund it? Is really the question I think we're trying to address with the development charges.

**Mr Hermesen:** I agree.

**Mr Gerretsen:** That's precisely the question: How should we fund it? It's our position that that's best determined between the individual municipality and the developers that are actually there, because getting back to your swimming pool example, I suppose the fact that there were more pools in the one place than the other place presumably made it a more attractive community, and that's precisely the reason why people want to develop there. Do you have any comments on that?

**Mr Livey:** The dilemma here isn't that we would be prohibiting a municipality from having something greater than a certain level of service that you couldn't add pools or other things to; the question is, what is the level that should be attributable to development normally?

When you look across the GTA, and I know these figures, on every one of the services, most of the municipalities charge almost the identical level of service. There are a few exceptions higher and a few exceptions lower, and no one municipality is excessive in all categories. It varies all across the board. In that story, in those graphs, are the essential levels that everybody agrees with more or less. It's there, ready for some regulation to say, "That's the level we're going to pick and use for now in the GTA," and we won't have to go to this average-cost thing.

As Bernie was saying, for an urbanizing municipality to be just coming on stream, they're really caught, because their municipal residents see the services next door, from East Gwillimbury into Newmarket they see those services, they use those services to a large extent

and yet they can't get the capital together to build those services in their municipalities on the basis of their tax base.

**Mr Gerretsen:** But would you not agree with me that in the case where the one municipality has got the higher level, it's the marketplace that eventually will bring it down to some sort of a norm, from a planning viewpoint, or else development will just completely stop in that municipality and then the political process itself will bring it down?

**Mr Livey:** Yes. The problem in some of our municipalities is that they don't have an awful lot more space for the type of development that's going in. Newmarket and East Gwillimbury is a good example. The new development in Newmarket is rapidly filling out that municipality and it's spilling over into East Gwillimbury, which is ready to take its role as an urban place at some time in the region but as yet hasn't got the capacity to do that. It's the upfront dollars.

**The Chair:** Thank you very much. Our time is expired. On behalf of the members of the committee, I thank you for coming this afternoon with your advice.

1630

#### ASSOCIATION OF MUNICIPALITIES OF ONTARIO

**The Chair:** We'd now like to call Mr Mundell from the Association of Municipalities of Ontario. Welcome. I'm sure you know that you have to introduce yourself for Hansard and that your presentation time is 20 minutes.

**Mr Terry Mundell:** My name is Terry Mundell, and I'm the president of the Association of Municipalities of Ontario, councillor from the county of Wellington and reeve from the village of Erin. With me today is Patrick Moyle, who is the commissioner of corporate services with the city of Brampton.

Ontario's municipalities are the province's primary partner in governing Ontario and in financing critical public services and infrastructure investment. As elected governments, they are responsible for the economic and social wellbeing of Ontario's communities. An important part of that responsibility is the management of growth in Ontario's communities, including planning, capital budgeting, development approval and the provision of community services.

Municipalities also safeguard the interests of property taxpayers. The property taxpayers who elect Ontario's municipal governments currently contribute over \$14 billion annually towards important public services. It is an amount almost equivalent to Ontario's personal income tax revenue. Services for residents and businesses are also financed through other means such as user fees, special area taxes and development charges.

The bottom line is that there are services current and future residents need and services they demand, all of which have to be paid for one way or another. Municipal governments are responsible for that bottom line, and they're accountable for providing the balance in the overall equation.

Municipalities bear an enormous responsibility as partners in government in Ontario. As elected officials,

municipal councils enjoy straightforward accountability to taxpayers, and we carry on the business of government in a manner that is more open and more accessible than either the provincial or federal governments.

The current provincial government's commitment to comprehensive legislative reform to deregulate the management of Ontario's municipalities is a very important step forward in streamlining public administration in Ontario. For many years, municipal governments have been over-regulated. A new, permissive legislative framework for municipal government means that the people of Ontario really can have better government at lower cost.

But the government is sending mixed messages. Bill 106, the Fair Municipal Finance Act, clearly establishes municipal control of local tax policy and, in doing so, reinforces the government's commitment to local autonomy. With Bill 106 strong, independent and autonomous local governments will be well positioned to meet the needs of our communities into the 21st century.

How can we reconcile such positive reform with Bill 98 changes that replace permissive financial arrangements with a prescriptive and more highly regulated framework? If the answer is, as I suspect, that the province has an interest in lowering the cost of housing, then surely there would be a mechanism that guarantees that the developers' cost savings are passed through to the consumer. But we all know that housing costs are driven primarily by market forces, more so than by the cost of providing homes and businesses with local services.

Development charges are a critical component of municipal revenue. In 1989, the current Development Charges Act was introduced to provide a legislative framework to allow municipalities and the development industry to plan for adequately financed growth in our communities. The basic tenet of the act is that development pays its own way. No one has presented any reasoned rationale as to why this approach is no longer appropriate or why it should be tampered with.

The current act ensures that the real capital cost of development is borne by developers and new owners, rather than by the existing taxpayers who have already paid to build their communities over the years.

Generally speaking, the current act works well. It is true that a lack of clarity within the act has led to differing interpretations and some inconsistencies in its implementation. There are also elements of fine-tuning that can be done in light of experiences with first-generation DCA studies and bylaws. The current act provided us with a stable framework that we can build upon. Starting over with a new act does not make sense.

Like David Crombie's Who Does What advisory panel, AMO believes that the scope of the current act is reasonable and fair. Municipal councils have to justify infrastructure services and costs in terms of projected growth and capital requirements. The act allows municipalities to determine the appropriate level of capital investment consistent with the long-term planning goals of the community.

In most communities in Ontario, there are no development charge levies. In most of the communities where development charges are levied, they are considerably



lower than the levels permitted under the act. They are lower because municipal governments consider local circumstances, including economic development and market competitiveness, and they make policy decisions based on substantiated rationale.

One of the most important features of the current act is that it is permissive. If municipalities do not want to charge developers, then they are not required to do so. The act also sets out a process to ensure that development charges policy is applied in a fair and open fashion, with public meetings and an appeal mechanism. If the charge is considered unfair by the public, developers or other stakeholders, it can be appealed. Relatively few development charges bylaws have been set aside by the Ontario Municipal Board under the current act.

As a key indicator of the province's economic vitality, the development industry plays an important role in the province's economy. Development creates jobs and improves the economies of municipalities by expanding the assessment base. Most communities welcome growth, and they welcome new residents and business investment. We all benefit from competitive development costs that encourage growth and investment in Ontario's economy. But development also brings new costs to Ontario's communities.

We know that sound, sustainable growth and development in Ontario's communities are dependent upon a well-planned and solid infrastructure and adequately financed, affordable public services. We also know that the provincial government has no intention of making any financial contribution to the financing of growth in our communities, so it falls entirely to municipalities to ensure that adequate financing is available. It is a critical component of success.

Successful growth relies on real partnerships between municipalities and the development industry. In fact, municipalities and the industry are partners in economic growth and sustainability. It is a partnership that has worked well and needs to work well in the future. It's a relationship that is built on cooperation and common objectives. Forced, prescriptive rules will do nothing to foster cooperation or productive relationships.

The current relationships between municipalities and developers are evolving as times change, and times are changing very rapidly. Who Does What will accelerate change very dramatically between now and 1998. The expectations of municipalities, taxpayers and new homeowners will also evolve and change. Most municipalities are examining what services and service levels they need and can afford, as well as new ways of delivering and financing those services. Municipalities need the flexibility to respond to such change and the autonomy to plan for it.

Competitive pricing of growth-related capital investment will facilitate new and innovative financial arrangements between municipal governments and the development industry. DCA or any other legislation should not present regulatory or practical impediments to new and innovative financing arrangements, including public-private sector partnerships. The DCA should encourage change and facilitate innovation.

The adequate financing of growth-related capital costs is a critical element in the viability of Ontario's commu-

ities, in fairness to existing and future taxpayers and in the success and marketability of development projects.

The principle of fairness is vitally important. Asking municipalities to subsidize development is to ask existing taxpayers to subsidize development. Surely no one would suggest that this is a fairer arrangement than the one that currently is in place.

Municipalities also want to be fair to the development industry. Development charges or other growth-related capital cost financing are intended to pay for growth. Municipalities are not asking the development industry to finance new municipal service responsibilities or to compensate for the elimination of provincial financial support for local services.

In fact, evolving municipal service responsibilities and the changing expectations of taxpayers will probably lead to fewer and smaller development charges. The capacity to operate and maintain services tied to growth-related capital investment is a key factor in planning for growth and determining or reviewing services and service levels. As operating funds become more scarce, capital projects will reflect new realities and new ways of financing investment.

Ontario's municipalities do not believe that Ontario needs a new Development Charges Act. We acknowledge that the current act would benefit from revisions to lend clarity and transparency to the process of determining and administering development charges. The statutory framework set out in Bill 98 is not acceptable to municipalities or to Ontario's property taxpayers. In fact, the proposed legislation will limit the capacity and tolerance for development in our communities, because it is a recipe for property tax increases.

Bill 98 seriously erodes local autonomy and undermines local responsibility and accountability for local tax policy. Municipal governments are elected to manage their communities in a manner that reflects local circumstances and local priorities. Arbitrary and unilateral decisions made by the province and codified in legislation seriously undermine that principle.

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Bill 98 not only fails locally, it fails on a macro level as well. The province has indicated that municipal governments will be fully responsible for the delivery of infrastructure services, but Bill 98 substantially restricts needed autonomy and authority to fulfil those responsibilities, and it destabilizes municipal revenues.

Although a detailed list of AMO's recommendations for modifications to Bill 98 is attached to this presentation, there are four areas of key concern for Ontario's municipal sector and for AMO that we would like to highlight. The four issues are: mandatory municipal subsidies for development, mandatory copayment, the retroactivity of Bill 98 provisions and process.

Bill 98 mandates four forms of municipal subsidy for development: 10% for hard services such as fire, police, transit, stormwater management, electrical utilities and waste management; 30% for soft services such as libraries and recreational facilities; the expansion of industrial uses; and ineligible services.

The municipal sector does not support any erosion of municipal authority to levy development charges. The

provisions that set out a 10% and 30% municipal share of development costs are inappropriate and unacceptable. AMO is encouraged by the minister's commitment to this committee that he will introduce amendments eliminating the provisions in the bill that require a 10% municipal contribution for roads, sewer and water services, hydro, fire and police services.

But why should a resident be charged 10% of the cost of storm drainage for a new development? Why should they be required by law to contribute to the costs of providing waste services that would not be needed if there was no growth? Why should the government force property taxpayers to pay 10% of the cost of transit services to serve a new community that is still on the drawing board, or 30% of the cost of a new library that does not serve an existing neighbourhood? Residents have already invested in the infrastructure of their communities when they bought their homes. Why should they be asked to finance growth as well?

It really is a question of principle. In many communities, Bill 98 will not lead to lower charges to developers. As we have noted, most communities do not charge developers the full amounts permitted under the act. There are many reasons why councils charge less than they are permitted to charge. In some cases, it's to be competitive in the development market. In other cases, it is because the growth-related capital investment will benefit the community as a whole. Under a new arbitrary and prescriptive framework, some developers will almost certainly end up paying more than they do now.

Bill 98 provisions that make certain growth-related investment ineligible are also unnecessary and wrong-headed. Municipal councils are elected to make decisions about how a community is managed. These decisions are made in open, public meetings. Together with the community, councils make decisions that reflect local priorities. It is what they are elected to do. An appeal mechanism is in place but, as I commented earlier, it is seldom needed and rarely used to overturn a development charges bylaw.

The principle behind a development charge reduction for expansions to industrial sites that do not use or require the level of service that a new industrial site would need is relatively sound. That the level of reduction should be established in an arbitrary fashion, with a total disregard for local circumstance, is not sound. The amount of the reduction must be based on local circumstances if it is going to be appropriate and reasonable. It's a decision that must be made by an elected municipal council, not by Queen's Park.

It is not necessary for the provincial government or for Queen's Park bureaucrats to decide what is or is not appropriate for a community to build, or to place restrictions on how investment is financed. If communities are unable to offer amenities to new and old residents, businesses and industry, the communities become a less attractive place to live or invest. When that happens, we all lose, including the developers trying to market their products.

While we acknowledge that the concepts of "benefiting" and "existing capacity" are appropriate considerations, we believe that the provisions of Bill 98 that

mandate a municipal subsidy for development should be eliminated.

We've said that Bill 98 provisions that mandate a municipal subsidy to the industry are inappropriate. They are contrary to this government's policy of permissive legislation for elected municipal governments. The provisions are detrimental to our communities and to Ontario's current and future property taxpayers.

The provisions in Bill 98 under which the copayments are set out are also practically and systematically unsound. They reflect a very limited knowledge of municipal finances.

Bill 98 mandates a municipal copayment for key development-related costs. For example, if growth necessitates an investment in library services, the council must turn to the taxpayers for a 30% share. As the bill is written, those new tax revenues must be raised, allocated and invested in the project as a condition of the municipality accessing the development charge funds.

Aside from the obvious concern that development will drive local tax policy and result in tax increases for existing residents, the system will not allow construction until the municipal financing share is available. It means that a municipality's financing capacity will dictate the timing and marketing of development projects. Where there is no inclination to increase property taxes, development could come to a standstill. Making municipalities financially responsible for a portion of growth-related costs is an ill-conceived approach for dealing with service level standards.

Bill 98 further compounds the flaws associated with copayments and the mandatory subsidy of some services by introducing retroactive adjustments that will undermine sound financial planning and cost property taxpayers money.

If the exclusion of certain services survives in the bill, retroactive ineligibility will reverse decisions made by municipal councils in good faith and in accordance with current provincial statutes. Such a move is as unreasonable as it is unfair. In many cases, such services have already been approved, financed and built. Unless ineligible services are grandfathered along with the infrastructure and capital planning approved for lots and blocks of record, retroactivity will place significant financial burdens on municipalities.

There are some aspects of process changes set out in Bill 98 that are positive. In a number of areas, however, changes that are generally sound need to be improved upon to make them work well for all concerned.

A process that makes the preparation of a development charges bylaw and background studies transparent for both the industry and taxpayers is supported. However, the cost of these studies, including growth studies, must be clearly recoverable in a development charge bylaw.

The bill's approach for an appeal of a development charges bylaw and amending bylaw is also generally supported. However, the provisions for sending a development charge complaint to the Ontario Municipal Board after a council has made a decision on the complaint should be removed. Altering a development charge on a case-by-case basis is a policy decision of an elected, accountable council, not the OMB. The only time a



complaint should go to the OMB is when a council fails to make a decision within the allotted period of time, which is currently 90 days.

Council decisions are guided by rules that legislation requires as part of the development charge bylaw. These rules must set out whatever development charge is payable in a particular case and what exemptions there will be for these types of development.

Municipalities must also be able to link the planning approval of a development project to the external services to a site that need to be constructed prior to development. Bill 98 prohibits this important step. It is unclear why the prohibition is being proposed. The process for setting a development charges bylaw is public and transparent. The development charges bylaw is appealable, as are the conditions for development approval of a planning application.

If this misguided prohibition is enacted, municipalities may find themselves being required by the courts to extend services to a development site by virtue of having approved the development application and having a development charge bylaw in place. As a result, the financial management capabilities of municipalities will be under incredible and unpredictable pressure. Municipalities must be able to somehow link development approval with offsite services as a condition of approval.

Municipalities across Ontario all want the same thing. They want stable and predictable revenues that match their service responsibilities. They want financial stability that allows them to plan for growth and to make the necessary investment in local services.

The province has indicated that it does not want to be involved in the management of local services. Those are the responsibility of municipal governments, and the province has committed to reforming municipal legislation to ensure that we are allowed to carry out the business of local government in an efficient manner. The province maintains that the days of provincial over-regulation and red tape are over, yet Bill 98 contradicts that commitment. It will replace a reasonable and fair piece of legislation with an overly prescriptive one. The result will be a needlessly complex and confusing administrative process. It confounds our business by asking us to subsidize development and by asking current property taxpayers to pay for growth.

In the Common Sense Revolution, this government committed to working with municipalities to ensure that its decisions did not lead to property tax increases. Bill 98 is a major departure from common sense, and its provisions do much to harm Ontario's communities and their capacity to grow.

**The Chair:** Thank you very much. I know there are a number of people who would love to ask you questions, but unfortunately our time has expired. Thank you for your brief.

**Mr Sergio:** Can we extend the time?

**The Chair:** No. We have other people waiting.

**Mr Gerretsen:** On a point of order, Madam Chair: With all due respect, this organization represents all of the municipalities in the province of Ontario. Surely the membership of this committee would allow one question per caucus of this organization. I would request that

unanimous consent be given so that we could at least have the decency to ask them one particular question on their presentation. Otherwise, Madam Chair, I would suggest to you that it's just a method that's being used to stifle the view of municipalities across Ontario.

**The Chair:** A request has been made for unanimous consent. Do I hear unanimous consent?

**Interjections:** No.

**The Chair:** I do not hear unanimous consent. Thank you very much for your presentation. We do appreciate it.

**Mr Gerretsen:** You guys are absolutely beyond belief. You just don't want to hear any criticism.

**The Chair:** Order, please. Are the presenters here from the Ontario Federation of Indian Friendship Centres? No? Then from the Ontario Hospital Association?

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#### ONTARIO HOSPITAL ASSOCIATION

**The Chair:** Is this Mr Egan?

**Mr Dennis Egan:** That's right.

**The Chair:** Mr Egan, thank you very much for being here early. We do appreciate your being here.

**Interjections.**

**The Chair:** Colleagues, our next presenter awaits our attention.

**Mr Egan:** Good afternoon. My name is Dennis Egan, and I'm president and CEO of the Mississauga Hospital. On behalf of the Ontario Hospital Association, which I represent today, I would like to take the opportunity —

**Mr Gerretsen:** On a point of order, Madam Chair: There's another presentation here, the Ontario Federation of Indian Friendship Centres.

**The Chair:** I'm sorry, they aren't here.

**Mr Gerretsen:** In other words, we had somebody else here that we had some questions of, and there are 20 minutes left —

**Mr Galt:** You're consuming this gentleman's time. Have some respect.

**The Chair:** On a point of clarification, we did ask if these people were here. They were not here. We've moved on to the next presenters, in the usual fashion. If they do turn up, we will ask them to present after this gentleman. Mr Egan, I apologize. I ask you to go on.

**Mr Egan:** I'm pleased, on behalf of the Ontario Hospital Association, to be here to present to this committee on Bill 98.

Bill 98 gives municipalities the power to make bylaws that require those who develop land to pay for increased capital costs required because of increased needs for service arising from new development. OHA supports this proposal.

However, the bill specifically prohibits a municipality from imposing a development charge bylaw to pay for the increased capital costs required because of increased needs for public hospitals. OHA strongly disagrees with this proposal, as it renders public hospitals an ineligible service and thereby eliminates a vital source of funding previously accessible to hospitals to meet their increased capital requirements resulting from new development.

There are areas of the province which are experiencing, and are expected to continue to experience, extraordinary growth in population along with a corresponding demand for many hospital services. The areas where the development charge issue is currently most significant is the greater Toronto 905 area. This includes Halton, Peel, York and Durham. The Ministry of Health's planning tool, called the planning decision and support tool, projects that the demand for acute care hospital services in the GTA-905 area alone will continue to grow at a rate greater than 4% per year over the next 10 years. Other areas which are experiencing high growth, at about 2% per year, include Simcoe, Waterloo, Wellington and Renfrew.

The GTA-905 hospitals currently provide direct care for approximately two million people. The planning decision and support tool projects that these hospitals will care for an additional 800,000 patients by the year 2006, assuming that the existing rate of referrals to Toronto hospitals continues. By consequence, Toronto hospitals will also see an increased demand for specialized care for residents in high-growth areas.

An analysis of growth between 1976 and 1993 has demonstrated that hospital utilization for births, emergency services etc is directly proportional to the increase in population. For example, between 1976 and 1993 in the GTA-905 area the number of births increased from 16,719 to 32,546, an increase of 95%. This is directly proportional to the population increase in the GTA-905 area.

Extraordinary growth with corresponding demands in services also exists, and will continue to exist, for other hospital programs such as cancer, cardiovascular diseases, ambulatory clinics, emergency, neurosurgery, psychiatry, laboratories and rehab services.

However, the physical plant infrastructure of Ontario's hospitals has not always grown at the same pace as the delivery of services. As the growth in caseload continues, hospitals will need to initiate capital projects in order to accommodate the service growth. Given the demographic realities at present and forecast for the future, accessibility to all sources of funding is necessary to meet these needs.

Hospitals are extremely limited in their source of funding for capital projects. The primary source comes from the Ministry of Health. In June 1996, the ministry reduced its funding commitment for hospital capital projects from two thirds to one half of the total cost of a project. The losses we are experiencing due to diminishing provincial commitment to capital development will result in a greater pressure to obtain funds through fund-raising initiatives in the community.

The fiscal realities of present-day Ontario have forced hospitals to become involved in large-scale fund-raising campaigns, not only to accommodate increased capital requirements due to growth pressures but also to meet existing capital requirements. It has never been easy for hospital communities to accommodate their one-third share of the costs of capital projects, so let me assure you that today and in the future it is and will continue to be even more difficult for hospital communities to find a one-half share of these costs.

While OHA can appreciate that it is a community responsibility to accommodate a portion of the capital costs of a project for its hospital, we would submit that municipal governments are part of that community and they have an inherent interest in sustaining a community's socioeconomic position.

In this regard, each municipality should have the authority to determine what is in the best interests of its own community. In support of that authority, a municipality should have the ability to impose a development charge bylaw requiring those who develop land in a particular region to pay for the increased capital costs required because of increased needs of public hospitals which result from such development.

What is perplexing is that the proposed legislation will withdraw a source of capital funding for growth at the very time when the Minister of Health has made a decision to recognize growth in population in the funding of hospitals' operating budgets. It does not make any sense to accommodate growth on the one hand and to withdraw support for it on the other. To be able to plan for growth in its community, a municipality requires the authority to accommodate that growth as it so determines, through the application of development charges for the increased essential services required by that growth.

There are certain essential services that any community needs: access to hospital care, fire protection, safety, sanitation etc. In reviewing proposals and plans for new development in an area, municipalities need to give consideration to the infrastructure required to support the new development, including the provision of these essential services. These services are considered so essential to the community that the population often assumes that these services will be available to them. In fact, there may be an assumption that in planning for this new development, municipalities and developers have duly accounted for these services. The residents assume, and have the right to expect, that the essential services will be available.

Recent polling confirms that people want reasonable access to high-quality hospital services. Therefore, where new development is proposed, a municipality must assess what services, especially hospital infrastructure, are going to be necessary to meet the demands of the increased growth due to the new development. Municipalities, therefore, must have the authority to make a bylaw to impose development charges for these increased demands for hospital services.

OHA fails to understand the rationale for the proposal that permits a municipality to make a development charge bylaw in respect of capital costs for police and fire protection but specifically prohibits the municipality from making a development bylaw charge with respect to capital costs for public hospitals. If police and fire protection services are essential, then hospital services are equally essential. In fact, each needs the other in order to provide their services more effectively.

To illustrate with two examples, first, a fire in a home: Firefighters attend at the scene and rescue the inhabitants. The inhabitants sustain serious second- and third-degree burns to their bodies and are immediately transported to hospital to receive emergency care. While the firefighters



have performed an essential service in rescuing the inhabitants, the injured parties now require the immediate services of a hospital. The hospital service is just as essential as the service provided by the firefighters.

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In another example, under the Mental Health Act a provision exists whereby a police officer has the authority to take a person to hospital if that person appears to be suffering from a mental disorder and is a serious threat to himself or others. The police officer has clearly performed an essential service to the community by dealing with the individual in crisis. However, the police officer cannot fulfil his or her statutorily mandated duty unless he or she has access to a hospital.

Having illustrated how hospitals provide essential services, we are at a loss to understand the province's proposal to treat hospitals in the same manner as entertainment facilities such as museums, theatres and art galleries; tourism facilities, including convention centres; and parks. While we believe that these services are desirable in any community, they are not essential.

The socioeconomic viability of a community is in large measure sustained by the presence of industry and commerce. Industry and commerce are attracted to a community that has the services necessary to support the needs of their employees, including hospital care. Attracting and maintaining industry and commerce in that community through the provision of services, such as hospital services, makes sense economically and benefits the municipality generally.

The major difference between Bill 98 and the existing Development Charges Act is a limitation on services and the costs for which development charges can be imposed for those services. One of the limitations being imposed is hospital services. It has been suggested that the moneys realized from the imposition of these limitations will be directed towards further new development, thus promoting job creation. However, over the past several years development charges to support capital costs for hospital services have been in existence.

In Peel region, and indeed throughout the GTA, which has experienced and continues to experience tremendous growth, developers have not been inhibited from undertaking further new development, notwithstanding that the municipality has exercised its ability to make a bylaw to provide for development charges for capital costs for hospitals.

Each municipal government, rather than the provincial government, is keenly aware of the needs of its own community and is in the best position to determine what should be done to accommodate those needs. Where new development is undertaken in a region, the development impacts on the population growth in that area. Members of that increased population will become ill, sustain injuries in the home or workplace, be involved in motor vehicle accidents, suffer heart attacks, give birth etc. As the population increases, so will these types of incidents.

However, the existing hospital only accommodates the existing population. If the demands for increased hospital services as a result of growth are to be met, it will require increased capital costs. Therefore, the municipality must have the authority to impose development charge

bylaws if, in its discretion, it determines that a need exists to accommodate the increased capital costs for hospital services.

OHA and its members can find no rationale for a proposal that allows a municipal government to impose a development charge bylaw to accommodate such items as library books and compact discs, swimming pools and fitness centres, tennis courts and baseball diamonds, motor vehicles and even lawn mowers, yet prohibits the municipality from imposing a development charge bylaw for capital costs to meet the needs for increased hospital services.

OHA recommends that municipalities have the authority to make development charge bylaws to pay for increased capital costs for hospitals which are necessary because of the increased needs for services arising from development.

I'd be pleased to answer any questions if time permits.

**Mr John O'Toole (Durham East):** Thank you very much, Mr Egan, for your presentation. It's an interesting point of view. I'm from the Durham region, which you mentioned is one of the high-growth areas, with GTA and 905. They don't have a development charge as part of their formula today for hospitals, although as I look at the acute care studies or the district health council's report, I wonder if we'd still have the seven hospitals after the restructuring commission. I think there are maybe a few surplus hospitals, if anything. I'm not suggesting there shouldn't be improvements to hospitals.

I'm going to ask you a question. Out of the some 800 municipalities in Ontario today, how many have a development charge for the hospitals, outside of York?

**Mr Egan:** There's York, Peel and I believe Halton, but I stand to be corrected. I believe those are the three.

**Mr O'Toole:** So it's not widely utilized today?

**Mr Egan:** No, that's correct.

**Mr O'Toole:** Would you feel that perhaps the current review of the Health Services Restructuring Commission today might indicate a greater provincial responsibility in some areas, perhaps health care, as you look to the future, and less for the hard and soft services at the municipal level? Do you see that's kind of what's going on here?

**Mr Egan:** On the restructuring of hospitals, I believe once the restructuring commission leaves York, Durham, Peel and Halton, they will have actually recommended significant additional funding, operating dollars for the four municipalities, because the amount of resources currently made available is significantly below any standard, and that's going to require a significant capital investment.

**Mr O'Toole:** Yes, but the capital right now is shared provincially and basically fund-raising. That's how it's paid for today. Right?

**Mr Egan:** If I could comment on that, the fund-raising, yes, although if I could use Peel as an example, our capacity to fund-raise is about \$5 million a year, and virtually all of that money goes to support new equipment rather than new facilities and services.

**Mr O'Toole:** It's an interesting dilemma.

**Mr Hardeman:** Thank you for your presentation. I was just wondering, going on with Mr O'Toole's com-

ments about how widespread the development charges for hospitals presently are and the fact that it is only centred in the 905 area, I guess we would call it, of the province, is there not a concern that it's being unfair to the new residents in those areas? Obviously there's need for health care in other parts of the province too. The provincial taxpayer is going to pick up any expansion that occurs there. Is it not unfair that residents in those specific areas would pay, first of all, on their new home and then be expected to pick up the tab for expansion throughout the province?

**Mr Egan:** Just to comment on that, first of all, we've had lot levies and development charges for many years in Peel. I think the unfairness would be all those people who have paid over that period of time now being potentially asked to pay in terms of community fund-raising.

Your point in terms of the province as a whole, I think we have to draw a distinction between the growth aspect of hospitals and the replacement of hospital facilities. That's not what we're asking here.

In the same way that our hospital, for example, has a \$5-million infrastructure project to replace our whole dietary department, that is not eligible for these development charges. We have to find the money, and our community, through the Ministry of Health 50% funding, would be responsible for that.

To answer your question, the residents of the 905 area are still responsible, like every other community, for the modernization of their hospital. What we're speaking of here is new residents creating new demand for hospital facilities. In Peel, it's very clear that we can't get any money for modernization; we can only get it for growth in services.

**Mr Gerretsen:** First of all, my apologies to you for interrupting or disrupting your presentation. It certainly wasn't aimed at you but rather at the dictatorial majority of this committee who don't want to have other people who disagree with them have their say.

I find it kind of interesting that if only York, Peel and Halton in effect have development charges as they relate to hospital construction, these are probably also the three major growth areas in the province. So these presumably would be the areas that would require any new construction of hospitals to take place in the future, and yet with what's happening in the Ministry of Health, it seems to me that the restructuring commission, at least so far, has only dealt with the closing down of hospitals rather than the recommendation dealing with the building of new hospitals in some of these areas. Did you find that there's some inconsistency in that approach?

**Mr Egan:** First of all, the OHA does support hospital restructuring. It's been on record, the consolidation of hospitals, "Let's protect the patient programs and eliminate facilities." I don't think that's as relevant in York, Peel and Halton. In Peel, for example, we have three hospitals. There are 800,000 people and pretty soon there will be a million people. We're not going to see the consolidation of hospitals in Peel.

What we're talking about here today really is future growth in that area and how do we not necessarily build a new hospital but expand those three physical hospitals. Your point about the inconsistency, it may have been in

the past. We may have been looking at a fourth or a fifth hospital in Peel, but I think what we would see now is expansion of the existing sites rather than building and then potentially down the road restructuring and coming back to three sites.

**Mr Gerretsen:** Where I have great difficulty is, if this only applies in three parts of the province and those three parts just happen to be the fastest-growing areas in the province regardless, why a government would in effect deem it necessary to withdraw this kind of development charge from the development charges concept. It doesn't seem to make any sense to me, and I assume it doesn't make much sense to you either, from the presentation you just gave.

**Mr Egan:** That's right. Quite frankly, it's difficult to get the profile raised on this issue when it only affects a small number, but we're pleased that the OHA has supported us with significant support. They're recognizing the issue and they asked me as one of the CEOs of the hospitals in that high-growth area to bring the message here today.

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**Mr Gerretsen:** Thank you. I yield the rest of my time to the member from the third party.

**Mr Pouliot:** I wish to thank you for taking the time to make the presentation that you have today. By your title and also by virtue of your presentation I sense a dedication. I know that your courage is great, for you are about to embark on and sail uncharted waters, for it has been decreed — and you make mention of the demographics — that the padlock is about to be the order of the day in many, many institutions, yet we see so well illustrated that the demographics point in an opposite direction. I just wonder, and you must agonize over this, where this will lead us. Friends are people whom you treat a little better, not a little worse. The time has arrived to reward under the present system those who have served so well in the past couple of years and the months leading to the last election.

I have two questions. Do you find, sir, that there is a lot that is broken with the present system?

**Mr Egan:** I'm not sure that relates to development charges. I think you have to look at it in a balanced way. I think over the last five years there are some significant improvements in care. If I can just use the example in our hospital, people used to get their chemotherapy treatments in the halls and, thanks to a donation from a member of the public, we now have an excellent suite and in fact we're able to deliver the care more cost-effectively. So I think if you really look at it in a balanced way, there are some significant improvements in care.

On the other side, there's no question we're relying more on families and we have shorter lengths of stay. That's not necessarily translating into worse outcomes. The evidence is that the public is rising to the challenge of supporting loved ones and the outcomes are being achieved.

The question is, where does the future go? Because you're right, the future, we don't know. We have to do our best and rely on our clinical staff and working together with the management staff to make the best decisions possible.



**Mr Pouliot:** You're right, I too was referring to Bill 98. You mentioned in your recommendation, and allow me to quote, with respect, "OHA recommends that municipalities have the authority to make development charge bylaws to pay for increased capital costs for hospitals which are necessary because of increased needs for services arising from development." I've taken from your wording that you are referring to a new class of taxes dedicated, in other words, for that specific purpose, focused on what you say here, "increased capital costs."

**Mr Egan:** I'm not sure I'm referring to a new — I think this is something that's been in existence since development charges were allowable. All we're suggesting is that municipalities continue to have the authority.

**Mr Pouliot:** Would you like to have the capacity to levy? You don't have that capacity at the present time.

**Mr Egan:** I think we're in a difficult position to do that because our boards are not elected. They do represent the community, but I think ultimately taxation has to be linked to that accountability that goes with being publicly elected.

**The Chair:** Time.

**Mr Pouliot:** One last supplementary. I'd appreciate it, madam.

**The Chair:** Very, very briefly.

**Mr Pouliot:** I see that the government du jour, the government of the day relies heavily on the capacity of people to fund-raise etc. I look at Princess Margaret and their glossy literature and I want to wish them well. Do you see this as being a game left to chance when we're talking about the most essential of services, the most essential of the human dimension, which is the collective health of the people of Ontario? Do you think it should be left to a lottery system or the whim of one to buy a ticket as opposed to another? Surely they can't be serious?

**Mr Egan:** My own view is that those lotteries seem to be doing very well but only for select hospitals that have a big profile like Sick Kids and Princess Margaret. The three hospitals in Peel, for example, got together with a similar venture and it didn't lose money, but it didn't make a lot. I think that's why we're really coming back to development charges as an important source of funds.

These dollars are being used right now to expand Credit Valley Hospital. Since Credit Valley Hospital was built in 1985, there have been 170,000 people added to Mississauga. This is one of the first capital projects. Our own hospital has some projects that we have sought support for from the Peel region and right now those dollars are currently available. What we're concerned about here is really the next generation in effect, that the services are protected for them.

**The Chair:** Thank you very much. An exciting beginning but a very solid presentation. Thanks again. We appreciate it.

#### CITY OF THUNDER BAY

**The Chair:** I'd like to now call Mr Stadlander from the city of Thunder Bay. Welcome, sir. We appreciate you being here.

**Mr John Stadlander:** Thank you for the opportunity to address the standing committee with respect to Bill 98.

My name is John Stadlander and I am the manager of current planning for the city of Thunder Bay. During my presentation today, I will outline the unique approach that the city of Thunder Bay has taken to date with respect to development charges, provide the committee with the city's comments on how it is anticipated that Bill 98 will change the way development is financed in the city and suggest several amendments to Bill 98.

Development financing prior to the Development Charges Act: The city of Thunder Bay has always funded the construction of trunk services, such as arterial roads and interceptor sewers, from general revenues. Consequently, before the present Development Charges Act, the city did not have any lot levy program in place. Local service installation to allow development to proceed was accomplished through the provisions of the Local Improvement Act or by conditions imposed as a result of a consent or subdivision approval.

Typically, a developer of a plan of subdivision was required to construct both the services inside the plan of subdivision and any external roads or services required to connect the proposed plan to the existing service grid. Except for storm drainage, where oversizing of services was required to allow other development to proceed, the city would reimburse the developer for the cost of the oversizing.

Development financing after the Development Charges Act: The present Development Charges Act does not allow the construction of local services external to a plan of subdivision to be required as a condition of subdivision approval. When this legislation was proclaimed, the city considered whether a city-wide development charge bylaw should be passed.

Having consulted extensively with the local development community and the public, the city and its hydro commission decided not to implement city or area-wide charges. However, city council still wanted developers to finance the cost of the local or direct services required for their developments. Therefore, the council adopted a program where site-specific development charge bylaws would be enacted for each site-specific proposal in order to provide any offsite services required. These site-specific bylaws included only those direct services required to permit the development to proceed, such as sewers, water, roads, hydro and storm drainage facilities. Contributions towards services, such as recreational facilities, arterial roads, sewage treatment plants, police and hydro facilities etc are not required. However, in some, but not all, instances the hydro commission requires a contribution towards the provision of trunk electrical circuits into specific areas.

Since it was not council's intention to have the city construct the required services, the city used the provisions of subsection 9(9) of the present act to enter into agreements to permit the developer to construct the required services in lieu of paying all or a portion of the development charge.

This development charge program has allowed development to proceed in the same way as before the proclamation of the present act. Unfortunately, this has required a significant amount of extra work on the part of the municipality and the developer in holding public meetings and preparing development charge bylaws and subsection

9(9) agreements. To date, the city of Thunder Bay has passed 33 site-specific development charge bylaws and has entered into 14 subsection 9(9) agreements.

The city of Thunder Bay has reviewed Bill 98 and how the proposed legislation could affect its site-specific development charge program and has the following comments on the bill:

**Local services:** Unlike the present act, which prohibits local service installation outside of plans of subdivision from being required by a subdivision agreement, subsection 60(2) of Bill 98 allows subdivision agreements to require the installation of local services related to a plan. This is a welcome change since the city will no longer have to process development charge bylaws for services which are clearly local in nature. If such a provision had been in place in the present act, many of the development charge bylaws and subsection 9(9) agreements required to allow development to proceed in the city of Thunder Bay would not have been necessary.

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However, the term "local services" remains undefined in Bill 98. This means that it is difficult to determine when a service can be considered local and when it is subject to the proposed act. For example, if a developer has to extend a water line down an existing street to reach a new plan of subdivision, and this water line passes several homes that can connect to this line, is this service still local? What is important is the determination of the minimum-sized service that is required for a plan, regardless of whether other properties can connect to it. If oversizing is required to permit other properties to benefit, then this would appear to be a development charge matter. However, since Thunder Bay reimburses developers for most oversizing costs, we would like the act to clarify that such a situation is clearly local. In other words, if a municipality funds the cost of oversizing, no development charge bylaw should be required.

We would suggest that the following definition be added to Bill 98, and I quote:

"Local service," for the purpose of clauses 60(2)(a) and (b), includes any service or part thereof deemed by the municipality to be a local service, having regard to:

"(a) whether the service is for the exclusive benefit of the lands to which the approval relates;

"(b) whether and to what extent the installation of the service may benefit other lands; and

"(c) whether and to what extent the service has a greater capacity in order to service lands other than those to which the approval relates."

**Cofunding provisions:** The city is in full agreement with the announcement of the Minister of Municipal Affairs and Housing on March 24, 1997, that the government intends to remove the requirement that municipalities contribute 10% of the costs of roads, water, sewer systems and hydro. If our municipality is required to contribute towards the cost of direct services to finance development, I anticipate that the city would review its policy of funding oversizing and providing trunk services. The city might consider the imposition of charges in order to recover the 10% municipal contribution in order to remain revenue-neutral. Effectively, the cofunding provision may force the city into enacting city-wide or area-wide charges. If this was not done, the general

ratepayers would be subsidizing the direct service requirements of new development.

**Local services previously constructed:** Some months prior to the enactment of the existing act, the city of Thunder Bay agreed to fund the cost of extending and lowering a sanitary sewer through one developer's lands to permit lands of another developer to be serviced with full municipal services. A plan of subdivision was approved for the latter property on the condition that the developer would reimburse the city for the cost of this sewer. Since the developer wanted to develop the plan in stages, the city agreed to prorate the payments over each stage of the plan. By the time the first stage was ready to be registered, the present act was in place and a development charge bylaw was required.

Under Bill 98, this would appear to be a local service, although there may be some limited opportunity for other properties to connect to this sewer. If it can be clearly identified that this is a local service, then the city would require repayment through the subdivision agreement process. If this is not considered to be a local service, the city may not be able to use the provisions of subsection 60(3) since only a portion of the plan was originally given draft approval.

In addition, if the cofunding provisions remain, and this is considered to be a development charge issue, the municipality will now have to absorb 10% of the cost. As stated previously, if the term "local services" is defined as we have proposed, and the cofunding provisions are dropped, the city would be comfortable with the proposed legislation. Otherwise the city requests that this issue be clarified in some other manner.

**Appeal period:** The present act has a circulation period of 20 days and provides that development charge bylaws be circulated within 15 days of their passage for a total appeal period of 35 days. Bill 98 proposes to extend this period to 40 days. The city of Thunder Bay is of the opinion that the time periods outlined in the existing legislation are sufficient and would suggest that no change be made.

**Services in lieu of payment of development charge:** Under subsection 9(9) of the present act clear authority is given to municipalities to enter into agreements allowing developers to install services in lieu of paying all or a portion of a development charge. There is no similar authorizing section in Bill 98. This absence stands out when subsection 27(1) is examined. Subsection 27(1) allows agreements to be entered into permitting payment of a development charge before or after it would otherwise be payable.

Subsections 9(4) and 9(8) of the present act grant similar authority. The city is not sure why a similar enabling section for agreements contemplated under subsections 39(1) and (2) has not been added. Perhaps the word "the" in subsection 39(2) should be changed to "an" so that the section would read, "A municipality that has agreed to give a credit shall do so in accordance with an agreement."

**Registration of agreements:** Both the present act and the proposed new act allow for the registration of development charge bylaws. However, there is no clear authority to permit the registration of agreements permitting the installation of services in lieu of paying a



development charge or for the registration of agreements permitting payment to be made before or after the charge is normally due.

The city of Thunder Bay has made extensive use of agreements to permit the developer to construct services in lieu of paying a development charge. These have been used for subdivision development where the developer is constructing both internal and external services needed for the development to proceed. A subdivision agreement, which can be registered on title, is executed along with an agreement requiring the developer to construct the external services in lieu of paying the development charge. Both of these agreements are secured by performance guarantees and it is preferable that both are registerable, so that when lots are being sold, lawyers searching title have notice of both agreements and can make appropriate inquiries to protect their clients.

Transition sections: Section 65 of Bill 98 requires that notice be given of the expiry or repeal of a development charge bylaw in order to give notice of the last day for applying for a refund of ineligible credits given under section 13 of the present act. It appears that this section applies to all bylaws. Bill 98 should clarify that such notice is only required where a development charge bylaw that has been repeated or has expired contains a charge for a service that is ineligible under Bill 98.

In the city of Thunder Bay, a credit is given under section 13 of the present act when a developer has installed services in lieu of paying all or a portion of a development charge under a subsection 9(9) agreement.

Section 69 of Bill 98 provides that an agreement entered into under subsections 9(4) or 9(8) of the old act, early or late payment, continues in force for development charge bylaws that expire or are repealed during the transition period or that expire at the end of the transition period.

The city of Thunder Bay suggests that a similar provision be given to agreements entered into under the present subsection 9(9) of the act, services in lieu of paying the charge, at least for agreements where credits given under section 13 of the present act are considered eligible credits under Bill 98.

The city of Thunder Bay normally gives developers three years to complete construction of internal or external services for plans of subdivision. The inclusion of such a section will allow for a smoother transition to the provisions of the new act. In the absence of this, the city will have to make the term of such agreements the same as the end of the transition period proposed in Bill 98. As we approach that time, developers will be faced with the situation where they may only have six months or so to complete construction. Given the climate in Thunder Bay, this can be a serious impediment to development.

In conclusion, the city of Thunder Bay recommends the following changes to Bill 98, as outlined in my presentation:

- (1) Define the term "local services" as suggested in this presentation;
- (2) Eliminate the requirement for a 10% municipal contribution for services such as sewer, water, roads and electrical power;
- (3) Clarify that the cost of local services already constructed can be recovered;

(4) Retain the 35-day appeal period for development charge bylaws, which prior to Bill 20 was composed of a 20-day circulation period and a requirement that the bylaw be circulated within 15 days of passage;

(5) Amend the wording of section 39 or add a paragraph to give municipalities clear authority to enter into agreements to permit the construction of services in lieu of paying all or a portion of a development charge;

(6) Allow for the registration of such agreements on the title to the property;

(7) Amend section 69 of Bill 98 to clarify that agreements entered into under subsection 9(9) of the present act continue in force in the same manner as agreements made under subsections 9(4) and 9(8) of the present act and clarify that section 65 only applies to bylaws that contained a charge that would be considered ineligible under Bill 98.

Thank you very much for the opportunity to make this presentation, and I'll be pleased to respond to any questions.

**The Chair:** We have about a minute and a half for our questioning from each caucus and we'll begin with the Liberal caucus.

**Mr Gerretsen:** I take it then that currently you don't have a development charges bylaw in Thunder Bay as such. You're basically using your own arrangements with the developers, correct?

**Mr Stadlander:** We use the Development Charges Act as required, so we have enacted, as I've said, about 33 site-specific development charge bylaws for the area of the subdivision alone to provide for external services or hydro, those sorts of things.

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**Mr Gerretsen:** But I take it you had these kinds of agreements in existence as well with respect to any new development before the current Development Charges Act.

**Mr Stadlander:** Prior to the current Development Charges Act, external services were required under the terms of subdivision agreement or as a committee of adjustment consent decision.

**Mr Gerretsen:** Would you feel then that if this act were not amended this way or if a Development Charges Act did not exist, in effect the city of Thunder Bay could work out its own relationships with respect to development and the developers who are involved in that?

**Mr Stadlander:** I think the point all along is that the city of Thunder Bay has worked very closely with both the public and the local development community to come up with a solution that is unique for Thunder Bay, that works for the community of Thunder Bay with respect to development financing.

**Mr Pouliot:** I'm your neighbour. I've known Thunder Bay quite well over the years. That's where we go for referred medical services and to do some shopping. I live in Manitouwadge. That's 400 kilometres northeast of Thunder Bay.

I want to thank you for your presentation. The last time I talked to Mayor Hamilton, he was indicating that when all is said and done, he's now of the opinion that there's not much that is being thrown at you, that is being suggested to you, as you're about to assume a new

role of an unknown cost that is revenue-neutral. In fact, he said \$30 million.

Last week, I was in Thunder Bay and talked to one of your colleagues, in his capacity as a municipal elderperson, councillor, and they were up to \$53 million ch-ching on the cash register — I hope Hansard got the “ch-ching” — in terms of the difference in cost. This is what the city of Thunder Bay, 113,000 to 115,000 people, will be asked to shoulder. I want to wish you good luck because when the other shoe falls, this will pale in comparison.

What is wrong with the present way of doing business? What is wrong with your relationship, both historical and at present, the give and take with the developer, the relationship that you have? You've indicated that it's worked quite well. Do you see this bill as tilting the balance, that you won't be able to approach your developers in the same fashion?

**Mr Stadlander:** What I'm trying to get across is that we want to make sure that the bill has the flexibility for all the communities, and communities like ours, to work with the development community, to work with the public, to come up with a solution that works for the city of Thunder Bay, which has its own unique set of circumstances and may be quite a bit different than the GTA. We'd like to see a piece of legislation that allows municipalities to make their own solutions and to work with the development community to come up with what's best for the community.

**Mr Hardeman:** Thank you very much for your presentation. I just want to go back to the question of Mr Gerretsen about the present law that exists and the fact that you really didn't need this in Thunder Bay because you were already getting by. At that time, of course, the Liberal government was in office and they decided we needed it, but you were already getting by with the present lot levies as they existed. You dealt with it and you put a system in place that you could go through the legislation and deal with individual cases by site-specific bylaws. Is it fair to say that this new bylaw or this new legislation will generally improve your operation so that you can do it more efficiently than under the present law, doing exactly what you do?

**Mr Stadlander:** As stated in my presentation, the fact that you now will be allowed to treat local services outside of plans of subdivision in subdivision agreements alone will ensure that we don't have to do as many site-specific development charges. So in that respect, yes, I don't anticipate that we would have to do as many of these site-specific bylaws, and that will allow us to get on with business a lot quicker. Therein lies our hope, that we can get some determination or allow municipal councils to make the determination of what is a local service so that we can get on with the business of developing our community.

**Mr Hardeman:** In your discussions that you had when you put the present regime in place, could you give me some indication as to what made the local politicians decide that only those basic hard services should be charged for, that you should not have development charges to cover your soft services in your community?

**Mr Stadlander:** There was a whole series of factors that came in at the time and there was quite a discussion

with the local development community. A lot of it centred around: “Let's try and keep the system operating the way the system traditionally had always worked.” That was one thing.

I guess there were two big points the development community made at the time. First, they felt this would be the thin edge of the wedge of a new tax and it would grow and grow; that it might be just direct services today, but tomorrow it may be more of the indirect services. So there was a fear there.

Third, the development community saw that if we took a whole series of developments, threw them in a hat, came up with the services that we needed to support those and then put them in a development charge, and the charge obviously would be the same for everybody, that in effect was rewarding the developer who did not have as good a location to develop. Let's say he was further from services or in more rock, a more difficult property to develop. So the development community felt they should basically be charged for services on the merits of the site that they were developing.

**The Chair:** Thank you very much for your thoughtful presentation this afternoon. I know the members appreciate you taking the time.

#### CANADIAN INSTITUTE OF PUBLIC REAL ESTATE COMPANIES

**The Chair:** Our final presenter is Mr Daniel from the Canadian Institute of Public Real Estate Companies. Welcome. Please introduce yourselves for the record.

**Mr Lorne Braithwaite:** I'm Lorne Braithwaite, president of CIPREC, and with me are Ron Daniel, executive vice-president, and Mark Noskiewicz, who is a partner with Goodman Phillips and Vineberg.

Thank you for giving us the opportunity to present to you today CIPREC's overview of Bill 98. What we'd like to do is first of all give you a little bit of background on CIPREC, give you a little bit of an idea of what's happened to us in terms of taxes over the last 10 years in particular — we do support Bill 98, we want you to know that, but we have some concerns — and last, summarize and give you an indication of how we feel in terms of Bill 98.

Let me start out with CIPREC's role. First of all, CIPREC members endorse the basic direction of Bill 98, the Development Charges Act, 1996. However, we have some implementation concerns that are dealt with at the end of this brief.

Looking more specifically at CIPREC's role and functions, the Canadian Institute of Public Real Estate Companies is an important voice for the Canadian real estate development industry. It serves as a forum for discussion of principal issues affecting this major industry and as a vehicle for the presentation of its views to the public and to governments.

Its member firms include most of Canada's large real estate investment and development companies whose shares are publicly traded, plus real estate subsidiaries of public companies, large privately owned real estate development companies, trust companies, insurance companies, pension funds and banks.



CIPREC members pay significant amounts of taxes in Canada and in Ontario. The total property and property-related taxes paid in Canada in 1995 exceeded \$1 billion, and in Ontario over \$600 million, and 80% of that in Metropolitan Toronto and the GTA.

Despite the past severe recession leading to dramatically lower rents and higher vacancies, between the six-year period from 1989 through to 1994 CIPREC's annual tax survey — these are actual taxes paid by members — shows that taxes per square foot in Metropolitan Toronto rose by 79%, while during the same period inflation rose only 21%. At the same time that taxes soared, municipal services such as garbage collection and snow removal have been withdrawn from commercial and industrial properties and property owners pay private sector contractors for these services with no reduction in municipal taxes.

CIPREC believes that property and property-related taxes are too high and are having a negative impact on Ontario's and Metropolitan Toronto's competitive position and the ability to attract new investment and create new jobs. The introduction of development charges in 1989 has added to the overall cost of developing land in Ontario and exacerbated concerns with respect to the overall property tax burden.

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Let's move on and look specifically at Bill 98. As I said earlier, basically we support Bill 98. CIPREC has firmly supported the government's initiatives aimed at achieving more equality and fairness across all aspects of municipal government, including property taxes, education programs and systems, and the cost-effective delivery of municipal services. Earlier this month, CIPREC submitted a brief in support of Bill 106, the Ontario Fair Municipal Finance Act, 1997.

In introducing Bill 98, the Development Charges Act, 1996, the government appears to have recognized that development charges under the existing regime are acting as a barrier to economic growth in this province. CIPREC strongly supports the government's intention to lower the overall cost of development charges through Bill 98.

To be more specific, CIPREC supports the following aspects of Bill 98:

First of all, the reduction in scope of eligible services. The development industry has always accepted the appropriateness of municipalities recovering the costs of hard services — things like road, water and sewer systems — through levies or development charges. However, under the 1989 Development Charges Act the range of soft services financed through development charges clearly became excessive.

CIPREC strongly supports the provisions of Bill 98 which prohibit development charges for cultural and entertainment facilities, parkland acquisition, hospitals, tourism facilities and city halls. These soft services are clearly facilities that benefit the entire community and they should not be financed by new development.

Second, in regard to our support, the requirement for municipal copayments: CIPREC supports the provisions of Bill 98 that would require municipalities to contribute 10% of growth-related capital costs for hard services and 30% for soft services. These provisions will add an essential element of accountability and discipline to the

system, in effect forcing municipalities to only include services in their development charges bylaws which are really needed.

CIPREC is aware that the government is considering changes to these provisions, for example, eliminating the requirement for a 10% municipal contribution towards hard services. We would urge the government to hold the line on these provisions, certainly with respect to the 30% contribution for soft services.

The argument often advanced against the municipal copayment is that the new development should pay its own way. We would point out that certainly with respect to the non-residential sector, new development through job creation and increased property taxes provides significant benefits to the community. Even in the absence of any development charges, CIPREC asserts that non-residential development more than pays its own way.

The third area in regard to our support; the requirement for background studies to analyse the long-term costs of new services: It is important that municipalities consider whether they can really afford the ongoing maintenance of new services before they require new development to finance the initial capital cost of such services.

A fourth area, exemption for industrial expansion: CIPREC strongly supports the exemption for industrial expansions, up to 50% of the existing gross floor area. Under the existing regime, there have been clear situations where industrial expansions have triggered significant development charges, even though the expansion created little if any demand for new municipal services.

There's the outline of the areas in particular of the bill that we support. Let's now focus on some of the areas where we have concerns.

CIPREC is concerned that certain provisions of Bill 98 run counter to the government's stated intention of reducing barriers to economic growth. In particular, CIPREC has concerns with the following four provisions.

First are development charges for transit services. Under the bill, 90% of the growth-related capital cost for transit could be funded from development charges. While the ability to impose government charges for transit services exists under the existing act, CIPREC believes that it is difficult to trace or apportion the cost of these services to growth. Moreover, with the reduction of provincial grants for transit services, if municipalities rely heavily on development charges to fund new transit services, the result will surely be major increases in development charges, offsetting any reductions that arise as a result of the other Bill 98 provisions. CIPREC supports UDI's suggestion that costs associated with transit services be apportioned equally, 50-50, between development charges and the tax base.

The second concern is development charges for waste management. CIPREC also supports UDI's suggestion that waste management facilities be funded through user fees rather than development charges. A user fee approach is more consistent with encouraging reduction and reuse. As well, with respect to non-residential development, CIPREC members typically pay private contractors for waste management services rather than relying on municipal services. In these circumstances, it is inappropriate for the non-residential land owner to be paying development charges towards waste management

services which they are not receiving from the municipality.

A third area of concern is development charges for electrical services. CIPREC supports UDI's position that electrical power be treated as an ineligible service. Again, a user fee system would be a fairer, more appropriate method of recovering the costs of electrical services.

A fourth area of concern is the elimination of section 14 credits. Under section 14 of the existing act, municipalities are to give credits against development charges for prepayment of levies or the provision of infrastructure which occurred prior to the coming into force of a development charges bylaw. Bill 98 would eliminate these credits. CIPREC does not understand why these prepayments or prior provisions of infrastructure should not continue to be recognized.

In summary and in conclusion, CIPREC supports the Development Charges Act, 1996, or Bill 98, as part of the government's overall initiatives aimed at removing barriers to economic growth in this province. Earlier in this brief we made reference to the fact that non-residential development, even in the absence of any development charges, more than pays its own way when one considers the overall benefits it brings to the community. We hope the government will bear this in mind during its deliberations and decisions on the various elements of Bill 98. Thank you. We're open for questions.

**Mr Pouliot:** Gentlemen, thank you for your presentation. I listened intently to it. It's your point of view, and I certainly accept that some have been overrepresented in terms of paying. It brought to mind the BOT, the business occupancy tax, which is another bill, but it's closely related to this.

You'll be pleased that under the proposed legislation, which is Bill 106, there will be winners and losers. The winners will be the large bank towers. They will stand to gain the most when the tax burden shifts. The second-largest winners will be the large hotels and the third-largest will be the large apartments. On the losers' side you will have the small industrial, you will have the commercial and also the residential, so you have cause for celebration, I'm sure.

You have mentioned the hard and soft services —

*Interjection.*

**Mr Pouliot:** Excuse me, can we have order please? I didn't interrupt them when they spoke and I would appreciate the same courtesy.

You've mentioned soft and hard services and you've gone through pain and effort to describe them, but would you consider seniors' homes — because they're about to be the responsibility of municipal government — and the building and maintaining of schools to be a hard or a soft service? You're the lawyer.

**Mr Mark Noskiewicz:** Schools, as I understand it, would continue to be financed, or there'd be an ability to finance them through education development charges, so I don't think there's disagreement that that's an essential service and I don't think this bill changes the funding of those, at least through development charges.

**Mr Pouliot:** But, with respect, building them changes. It will now be the responsibility of the municipality. You will agree that schools are a very important component of

any development, like a hospital, for instance. Those are essential services, just as much as a swimming pool, some would say as sewer and water. So now they're to be added to the charge. You wouldn't be opposed if this would be part of the development charges?

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**Mr Noskiewicz:** Which?

**Mr Pouliot:** Schools and seniors' homes.

**Mr Noskiewicz:** As I said, I don't understand Bill 98 to be changing the provisions with respect to the financing of schools.

**Mr Pouliot:** But you see, when you look at Bill 98, you've got to look at the sidecar, because these are the new bills that are coming through.

**The Chair:** Your time is up.

**Mr Pouliot:** Thank you, Madam, and I want to thank my colleagues for their dedicated attention.

**Mr Bart Maves (Niagara Falls):** My question is just simply this: On page 3, right at the bottom, you've said, "Under the existing regime, there have been clear situations where industrial expansions have triggered significant development charges, even though the expansion created little if any demand for new municipal services." I wonder if you could give me some examples of those situations.

**Mr Braithwaite:** I'm not sure I can give you exact examples, but I can cite the macro numbers in terms of the survey that was done of a number of the members. I think there were something like 13 or 14 members of CIPREC. We took their actual taxes paid on a per square-foot basis for the last six years, and the compound growth rate was 79% when the inflation rate was 21%, so it's spread into that. We have lots of data specifically. I could dig it up if it's of interest to you.

**Mr Maves:** Yes, I'd be interested in seeing that.

**Mr Hardeman:** Thank you very much for your presentation. We've had a number of days of hearings and we've heard considerably from the municipalities and from the builders. One of the concerns that's been expressed through those hearings is that the savings, if the development charges are reduced, will not be passed on to the home buyer. It will be an extra profit for the development industry.

From your point of view, for your organization, you're not into building, you're into selling. Is that right?

**Mr Braithwaite:** I'm president of a company called Cambridge Shopping Centres that basically builds, owns and manages shopping centres, but many are members of CIPREC. Some of them are residential developers, some of them are office tower developers. They're the full spectrum.

**Mr Hardeman:** How would you suggest that we deal with the issue of making sure that the dollars are passed on through to the buyers as opposed to becoming an extra profit for the developments?

**Mr Braithwaite:** I think the best way there is to have a very competitive marketplace.

**Mr Hardeman:** In your opinion, that will do it?

**Mr Braithwaite:** I think that's one element that will do it. I think the other thing that is an interesting overview of our industry, given the 79% compound rate, is that in fact a high percentage of our industry in the last



five years has gone broke. If there is an opportunity where the market comes back some and there are some government charges backed off that enable shareholders in our industry to make, hopefully, a return, where they won't go bankrupt, I don't think that is all bad either.

**Mr Gerretsen:** Pardon me if I find there's some inconsistency in your presentation. Basically what you and the development industry are saying is that more of the new development and the costs that go with respect to increasing the requirements of what's already there should be paid for out of the existing tax base because development shouldn't pay for it to the extent that in some municipalities the Development Charges Act allows. You say, for example, that in the city of Toronto the taxes have gone up 79% as a result of that. We're hearing, though, and your own presentation is saying, "Don't let new development pay it but let the existing tax base pay it," for example with respect to transit. If you were to allow that to happen, wouldn't the amount of taxation that's actually raised locally increase at an even more rapid rate than the 79% that it's already done here in Metro Toronto over the last five years, or in the time period 1989-94?

**Mr Braithwaite:** What's happened in many jurisdictions, unfortunately, there's been a tremendous shift to the commercial side, and you haven't seen anywhere near those kinds of increases on the residential side, for example.

**Mr Gerretsen:** So that's it. You're really saying that there is an unfair level of taxation being paid for by the commercial and industrial sector as compared to the residential sector. That's your real argument then.

**Mr Braithwaite:** No, not necessarily. I'm saying that when you look at the facts in regard to the industry segment we're in, it has driven a high percentage of our companies in this country where they're bankrupt. So the current system is not working. The current system is not equitable to our particular section. Where it goes from there or how you balance it, that's part of your job.

**Mr Gerretsen:** Exactly, and if you allow more of the new development costs, whether they relate specifically to development or outside of that, to be paid for out of the general tax rate, then your 79% that you're talking about may be much higher than that. That's why the law as proposed here may allow for even larger tax increases than the kind that you've talked about, sir.

**Mr Braithwaite:** It depends how you allocate it. It depends how you balance, how you, as the orchestra leader on this thing —

**Mr Gerretsen:** Of course, that's one area where we'll hear from the government members, once we've discussed Bill 106, because then I think their attitude and their laughing manner will change quite drastically.

**The Chair:** Thank you very much.

**Mr O'Toole:** I think he's missing the point there.

**The Chair:** Gentlemen, we appreciate your taking the time to come before us this afternoon. Thank you very much.

**Mr Maves:** Mr Chair, I was just going to ask a question of the parliamentary assistant quickly. Earlier, we had been asked for unanimous consent to ask questions of AMO after they had exhausted their time. We

were already 25 minutes behind schedule, with a vote coming, I think, in the House and a 6 o'clock deadline. In deference to the people who had to present, we didn't allow further time for AMO.

I also didn't allow for the consent because I was assuming they had been consulted already by the ministry, and I just wondered if the parliamentary assistant would confirm whether or not that was the case.

**Mr Hardeman:** Yes, I could confirm that AMO has been consulted with and we've had a considerable number of meetings with AMO dealing with the act.

**Mr Maves:** Thank you. That makes me feel better.

**Mr Hardeman:** And I appreciate the fact that they used their full 20 minutes to explain their position on the act, rather than listening to the rhetoric of the opposition.

**Mr Gerretsen:** That kind of debate, it may very well be, but —

**Interjections:** We allowed it for you, John.

**Mr Gerretsen:** Then allow me to respond. Are you going to cut me off too?

You're basically saying AMO has spoken to the government on these issues. That's what you're saying. The opposition, though, has not had the same opportunity to discuss the presentation that AMO made here today, between AMO and the opposition.

**The Chair:** Thank you. Colleagues, before we adjourn —

*Interjection.*

**Mr Gerretsen:** Not for the record. Sure, you can always talk privately.

**The Chair:** Colleagues, before we adjourn, we should deal with the issue of clause-by-clause amendments being submitted to the clerk's office. The suggestion has been made that the clause-by-clause amendments be submitted by Friday noon.

**Mr Hardeman:** I think we have unanimous consent, Madam Chair.

**Mr Gerretsen:** At this point you don't have unanimous consent on that. I'd like to hear what happens on Wednesday, quite frankly, what kind of presentation we're going to have on Wednesday. Is this not a matter that should be discussed by the subcommittee normally?

**Mr Hardeman:** That's why I talked to the other two members of the subcommittee, to see whether they had any objections to noon.

**Mr Gerretsen:** That's right.

**Mr Hardeman:** My understanding was, before this meeting started, that the other two members had agreed.

**Mr Gerretsen:** And it's quite obvious that these meetings do change things from time to time. So I'm not prepared to agree to unanimous consent at this point in time.

**Mr Hardeman:** Madam Chair, then I would ask you to call a meeting of the subcommittee at your earliest possible convenience, like in 10 minutes, to see if we can come to an agreement as to when the amendments should be put forward.

**The Chair:** All right. We'll call a meeting of the subcommittee. I will do that shortly.

Colleagues, we will adjourn and reconvene on Wednesday the 23rd, following standing orders at 3:30.

*The committee adjourned at 1759.*





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    Mr Ernie Hardeman (Oxford PC)

    Mr Gilles Pouliot (Lake Nipigon ND)

    Mr Mario Sergio (Yorkview L)

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First Session, 36th Parliament

## **Assemblée législative de l'Ontario**

Première session, 36<sup>e</sup> législature

# **Official Report of Debates (Hansard)**

Wednesday 23 April 1997

# **Journal des débats (Hansard)**

Mercredi 23 avril 1997

**Standing committee on  
resources development**

**Comité permanent du  
développement des ressources**

**Development Charges  
Act, 1996**

**Loi de 1996 sur les  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
RESOURCES DEVELOPMENT

Wednesday 23 April 1997

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU  
DÉVELOPPEMENT DES RESSOURCES

Mercredi 23 avril 1997

*The committee met at 1634 in committee room 1.*

## DEVELOPMENT CHARGES ACT, 1996

LOI DE 1996 SUR LES  
REDEVANCES D'AMÉNAGEMENT

Consideration of Bill 98, An Act to promote job creation and increased municipal accountability while providing for the recovery of development costs related to new growth / Projet de loi 98, Loi visant à promouvoir la création d'emplois et à accroître la responsabilité des municipalités tout en prévoyant le recouvrement des coûts d'aménagement liés à la croissance.

## CANADIAN TAXPAYERS FEDERATION

**The Chair (Mrs Brenda Elliott):** Colleagues, we'll begin our hearings on Bill 98, An Act to promote job creation and increased municipal accountability while providing for the recovery of development costs related to new growth. Our first presenter this afternoon is Mr Pagnuelo. Welcome, sir. We do apologize for the delay this afternoon, but those are the rules.

**Mr Paul Pagnuelo:** Good afternoon, Madam Chair and committee members. The Canadian Taxpayers Federation welcomes the opportunity to comment on Bill 98, which deals with development charges as a way in which municipalities can require those who develop land to contribute to the capital costs necessary to service new development.

It is an organization that's dedicated to advocating and protecting the common interests of all taxpayers. I have to emphasize we play no favourites. We don't favour, say, individuals over businesses, homeowners over tenants, small businesses over big businesses, permanent over seasonal residents, residential over commercial or farm property owners, or long-established property owners in a community over new ones.

Our focus is fair taxation for all and to ensure that governments at all levels provide services which taxpayers are willing to support and that they do so at the most affordable cost. The fact is that when it comes to using government services, there is no free lunch. Government services cost money and that means someone has to pay for them. Governments have no money of their own. Whenever governments spend a dollar, it's a dollar that came from taxpayers.

What we find extremely annoying are politicians who make wild claims, when justifying a spending initiative like a lavish new city hall or a community centre with a bocce ball court, that it costs taxpayers nothing. Unless they believe in Santa Claus, the Tooth Fairy and the

Easter Bunny, where do they think the money came from to pay for the expenditure?

While browsing the Web recently, we came across the home page of Tim Jones, who's mayor of Aurora. He had the following to say about development charges:

"Currently, the Ontario provincial government is reviewing what municipalities can include when charging developers who expand the size of our communities.

"Before development charges, municipalities charged lot levies to build parks, provide for expanded amenities like community centres etc, and these were fairly open-ended. Now the province has regulated what municipalities can charge for and up to what level of service that would include (usually based on the current level of service). This was to protect the builder or developer from getting gouged by overly ambitious municipalities.

"To most municipalities, there is one guiding principle in future growth, especially in these tight economic times of reduced/eliminated provincial grants and financial supports: Growth must pay for growth, especially in the area of infrastructure and community level of service. It is not reasonable or fair to expect the existing taxpayer to foot the bill for new growth.

"Currently, development charges include water and sewer infrastructure, storm drainage, transportation, electrical, waste management, fire and police capital services, plus recreation, library, health, social and cultural services that require expansion because of growth. The building and development industry are lobbying to have everything except water, sewer, storm, roads and raw parkland removed. This will ultimately mean existing residents will have to pay way more in taxes. In Aurora, that adds up to a 25% tax increase based on the next 10 years of planned growth to support the capital costs of expanded services in the other areas. This is not growth paying for growth.

"If this becomes the case, we will see councils halt all plans for growth for economic reasons, and for any plan that does proceed, municipalities might post signs that might read:

"Notice to All Potential Home Buyers

"Welcome to Aurora's first provincially mandated second-class subdivision. The developer and builders will be making every effort to convince you to buy a new home for \$4,000 to \$7,000 less (unless they decide to keep it as profit) which is:

"Safe without fire protection;

"Green without parkland; and

"Blessed With a Quality of Life Second to All without recreation and library facilities.

"Govern yourself accordingly!"



"Would you buy in such a development? If the province wants to help the building industry, it should stick to the user-pay principle that it has been applying to other areas of services and ensure that growth pays for growth by keeping the development charges intact!"

When I come across comments like those of Mayor Jones, I'm reminded of the story of the strongest person. This is a story where the local bar was so sure that its bartender was the strongest man around that they offered a \$1,000 bet. The bartender would squeeze a lemon until all the juice ran into a glass and hand the lemon to a patron. Anyone who could squeeze one more drop of juice out of the lemon would win the money. Many people had tried over time — weightlifters, longshoremen — but nobody could do it.

One day a scrawny little man came in, wearing thick glasses and a polyester suit, and said in a tiny, squeaky voice, "I'd like to try the bet." After the laughter had died down, the bartender said, "Okay," grabbed a lemon and squeezed away. Then he handed the wrinkled remains of the rind to the man. The crowd's laughter turned to total silence as the man clenched his fist around the lemon and six drops fell into the glass. As the crowd cheered, the bartender paid the \$1,000 and asked the man: "What do you do for a living? Are you a lumberjack, a weightlifter, or what?" He replied, "Heck no, I'm the development charges officer for the municipality."

1640

The point of the story is that development charges are a great way of squeezing the owner of a new home or business property dry. Development charges are simply another mechanism to increase municipal government revenues without having to face the wrath of the general tax base. Expenditures for many of the eligible services to be funded by development charges, under both the existing Development Charges Act and those proposed under Bill 98, would never see the light of day if local politicians had to face their voters and justify why their property taxes were going up.

Development charges are also a backhanded way of committing all property owners to future tax increases to pay for the ongoing operating costs associated with a capital expenditure. They're a classic example of taxation without representation. Mayor Jones and others who think like him are wrong when they equate their use of development charges to the user-pay principle. Development charges are for the most part nothing more than a tax grab disguised as a user fee.

In many cases, the users of the services where the capital costs have been funded by development charges are getting a free lunch at the expense of others. To suggest that developers and builders will profit by the changes proposed by Bill 98 is not only inflammatory but also very misleading. Development charges don't eat into their profits because they're passed on to the purchasers of the property just as any other cost is.

The Canadian Taxpayers Federation does not object to user fees. In fact, we believe that they are a fairer method and means of funding certain types of government services because all taxpayers are not burdened with having to subsidize specific users or beneficiaries. However, the line has to be clearly drawn and defined as

to what types of services can be traced to specific beneficiaries. Services which benefit the general community cannot be characterized in this manner and the suggestion that the owners of properties should pay extra for them is fundamentally wrong when it comes to tax fairness.

For example, although Bill 98 does not relate to education development charges, there's a general principle which does apply. Building new schools is an ongoing pressure with a growing population, but no government flinches in asking senior homeowners or businesses to fund general education. In other words, it is inconsistent to link new capital school construction to new subdivision homeowners while ignoring the lack of a link to other ratepayers without school-aged children who are asked to pay for education funding for the general good of society.

And where is the consistency in asking the owner of a new property to pay for the capital costs of a new police cruiser or firehall, when that same owner will be billed, as will every other property owner in a municipality, to pay for the replacement of an existing police cruiser or the repairs to an existing firehall used in another part of the municipality?

What about the inconsistency which exists in the tax treatment of the purchaser of an existing property and that of a new property? A family with two young children, purchasing an existing home, where the current owners have no children, pay nothing in development fees for new community centres, libraries etc, even though they may be adding an additional burden on existing services, whereas that same family purchasing a new home would. Why should the existing owners of that property, say a retired couple, be expected to pay development charges for downsizing to a new seniors development in that same community?

Costs associated with new developments should not be separated from general taxes to the extent that they relate to general municipal costs. New homeowners will add to the municipal tax base and that new revenue should cover any incremental increase to the costs of general services — services such as policing, fire protection, garbage collection, transit, arenas, community centres, libraries, roads etc; that is, services that are paid out of general tax revenues for other established subdivisions and that are non-specific services which benefit ratepayers as a whole.

Established subdivisions do not pay any specific additional charges for these items which were put in place out of general revenues years ago. For instance, they do not pay for road repairs or rebuilding in their areas, except out of general property taxes, which new subdivision owners will also contribute to. The same is true for upkeep and maintenance on community facilities.

In conclusion, we believe that development charges are discriminatory and that they unduly penalize and hurt the owners of new properties. Development charges are an inhibitor to development, and by discouraging immigration to a municipality they reduce the potential for expansion of the local tax base and the economic spinoffs of more consumers, businesses, jobs and investment locating in that municipality.

Ontario's economic potential is bright but we are competing both nationally and globally. Erecting or retaining

onerous tax barriers to the attraction of wealth-creating human capital makes no economic or political sense.

If the owners of a new property should be financially responsible for certain infrastructure, such as the building of new roads and sidewalks, street lighting or the extension of water and sewer lines to their property, then fairness dictates that the owners of properties in established areas should equally be responsible for the capital costs of building, repairing or replacing similar infrastructure within their neighbourhood. Such costs could be amortized and debentured and reflected on property tax bills as a local improvement tax, separate from the general municipal levy.

Bill 98 is a timid step in the right direction in attempting to reassess who should pay for what at the local municipal level, but it falls well short of putting an end to the free lunch concept and the introduction of a system which is fair and equitable to all taxpayers in a municipality.

Rather than spending unproductive time creating innovative new tax schemes to suck even more out of taxpayers' disposable incomes, municipal governments should be directing their energies towards reducing local tax burdens by providing cost-effective and efficient services to their citizens, thus making their communities an attractive place in which to live, work and invest.

The provincial government can assist in the process by scrapping the use of development charges altogether and by introducing replacement legislation which ensures a much fairer means of allocating capital costs to taxpayers. Thank you for the time this afternoon to address the committee.

**The Chair:** Thank you very much. We have two minutes for questioning for each caucus.

**Mr John Gerretsen (Kingston and The Islands):** Thank you very much, Mr Pagnuelo. As usual, your presentation is very interesting and sheds a different light on these issues once again. I take it you feel that any additional costs relating to new development ought to be paid for over a period of time by that new development through a local improvement tax.

**Mr Pagnuelo:** Yes, we do. Again, I need to emphasize that if that's the decision — and we think that's probably the wise decision to go for in terms of certain services or certain infrastructure costs — then that same principle has to apply to established neighbourhoods. If the new home owner is expected to pay for the costs of a new road in front of their home, then when it comes time in an established neighbourhood for a road that is now 15 or 20 years old to be replaced, it should be the neighbours in that neighbourhood who pay for the capital cost of re-building that road and not coming out of general tax revenues. That then provides fairness and equity to all concerned.

**Mr Gerretsen:** Can you just expand on that one last statement that you make in your presentation, that you want the government to introduce replacement legislation which ensures a much fairer means of allocating capital costs to taxpayers. What specifically do you have in mind there, sir?

**Mr Pagnuelo:** Again, let's do away with development charges and let's reassess — and the legislation should

just really cover capital costs. The legislation should take a fresh, brand-new approach to municipal costs altogether. How do we pay for municipal costs? There are a variety of ways: through user fees; through parcel taxes, which is something that's now being used in British Columbia to partially avoid the impact of AVA; and then general levies.

But over and above that, if there are certain infrastructure costs which are very specific to, let's say, a street or to a subdivision, then we need to say, "Should those capital infrastructure costs be paid for by those in that particular community or should they be spread among the entire municipality?"

If the decision is that they should be really paid for by those specific users, whether it's watermains and sewers, whether it's roads, whether it's new street lighting, then that same principle has to apply not only for new subdivisions but also established neighbourhoods. So we're saying, if we're going to go that route and if we're going to look at this whole issue of tax fairness at the municipal level, then let's do it right and let's not do it piecemeal. That requires a basic rethink about how we charge for local municipal services.

1650

**Mr Gilles Pouliot (Lake Nipigon):** Thank you. A renewed pleasure indeed. Welcome back. You sure did a job on us when we were the government, Mr Pagnuelo, and if I was to take my shirt off I still can prove that the scars — it will take a political generation to heal, sir. But certainly, I respect you and I respect your opinion as the champion — you're the man — as the defender of taxpayers at whatever level. You are driven by a mission.

In line with this, you make a plea with respect to users pay, but then you stop short, cognizant that at times we have to have the collective or the general fund pay for other things. For instance, Miss Jones, who's 74 years old, slips in the bathtub — it's not a bar joke — and dislocates her hip. She doesn't have any money, so we will pay for Miss Jones; we're on the waiting list, that's not a problem.

I see you do identify some hard and soft services and you relate them, you focus them, to development charges. When you buy a property you buy the hard services — the sewer and water, lighting, fire protection. But you also buy the soft services — you buy the museum, you buy the quality of life, you partake of the library. So at one time it becomes quite difficult to differentiate between what is nuts and bolts. Clean running water and the air that you breathe etc, sort of go hand in hand.

I'm not trying to impute motive. I'm sure that the marketplace will dictate that the developers pass some savings along to that class of consumer, but when all is said and done, the money has to come from someplace. If I'm a present homeowner, will I not be asked to subsidize you as you're welcomed to the new subdivision in our municipality?

**Mr Pagnuelo:** I don't see why that should necessarily be the end result. If we're looking at the need for expanded libraries or expanded police or fire services, the additional tax revenue that's coming in from those new properties on an annual basis should be sufficient to



cover the incremental cost of providing those additional services.

Again, if I use the analogy — let's say a new subdivision is created and so they say, "Okay, we need a new firehall now to service that part of the municipality, and the cost, or part of that cost, should be recovered in terms of the capital costs through development charges." If that is to be the concept and the principle, then fairness would argue that an existing firehall in an older part of the municipality — if it's now 50 years old and is crumbling and needs to be rebuilt, the residents who were serviced by that firehall in the municipality should pay for the capital costs, and not all taxpayers in the municipality.

What do we do when we start thinking along those lines? We're really taking that municipality now and breaking it into several smaller ones. Fire protection services the community as a whole, and if the argument is made that if you in that new subdivision are getting this new fire station to service that area, then you should pay for it, again, fairness would dictate that if there was a fire in the old, established part of the municipality and they needed to bring a truck or two trucks from that fire station, the taxpayers in that subdivision should be reimbursed.

**Mr Pouliot:** If you wish to get re-elected.

**Mr Pagnuelo:** We just think there are certain things where those extra costs are going to be made up through the additional tax revenues and if a municipality does not want growth, then simply pass bylaws and planning laws that prohibit growth.

If the community is striving for growth in its area, wants to attract new investment, new businesses, which all result in new jobs, and getting less people on the unemployment rolls, creating their own salaries, resulting in more tax revenues, then the municipality has to say, "Are we actually shooting ourselves in the foot by bringing in prohibitive development charges that are really in many ways discriminatory?"

**Mr John O'Toole (Durham East):** Thank you very much, Paul. I'm always pleased to see you here, as you see your member operating in the House. As you're one of my constituents, I really have to be accountable to the great taxfighter, and thank you for bringing a bit of humour. I think there's some truth in it. I'm kind of envisioning the taxfighter versus the lemon squeezer. I might compare the lemon squeezer basically to a tax-and-spend type government getting every cent out of the taxpayer that they could get.

On a more serious note, I've got a couple of points. When I was on local and regional council and indeed as a school trustee, I never really felt that the capital issues within budget were as significant as the operating. I saw the operating as never going away and always increasing, exponentially I might add, with growth.

**Mr Gerretsen:** What kind of council were you on, anyway?

**Mr O'Toole:** You were on the same council. Take a look at Kingston; just the same problem. It exponentially increased. It's the operating that we can't manage. The capital, in fact, has been going down. They've been building schools cheaper than they were in the 1990s — square-foot costs etc. My question to you is just sort of

looking at that. Do you espouse the system you responded to Mr Gerretsen, that the local improvement initiative was the way to handle infrastructure cost? When I heard you answering Mr Pouliot's question, you seemed to soften down and say there's common-shared benefits.

I suspect the question I have for you is: Is it the level of service that we should be dealing with which is in this legislation, which is the most important thing, looking at the longer-range escalating cost? Have you looked at that aspect of the legislation and do you think that is the right thing to be looking at? What they've been doing is averaging up — more of everything, higher levels of service — in their development charge formula. Do you think that's a good idea, the averaging of levels of service?

**Mr Pagnuelo:** I think what you have to focus on is initially the specific services themselves. When I'm talking about a local improvement tax, I'm saying that if we're going to be fair and equitable, then certain infrastructure costs are to be borne exclusively or almost exclusively in terms of capital costs by new home owners. You have to apply that same principle to that same type of infrastructure in established neighbourhoods where it may have to be replaced or upgraded.

As long as we've got that fair equity, whether we do it that way or whether we pay for everything through general revenues doesn't really matter much. But what we want is to ensure that there's a level playing field, that one type of homeowner is not discriminated against unfairly or unduly. If the decision is that certain infrastructure will be paid for by those specific homeowners who receive that benefit directly, whether it's a new sewer and watermain, whether it's a rebuilt road or a new road, the question then becomes, do you charge them for it right now, in one lump sum payment, or do you distribute those costs over a period of 15, 20, 25 years, the expected life of that particular infrastructure?

Perhaps the latter is the fairer way to go for most people, particularly if you're also dealing with that fair principle within established neighbourhoods. So you give people an opportunity to repay that capital cost over a reasonable period of time as part of their annual tax bill, but separate from the general municipal levy, which would apply to everyone for those services which are deemed to be of benefit to the community as a whole, whether it's the local community centre, the firehall, the arena, what have you.

**Mr O'Toole:** There's an answer there and I appreciate that. Good paper, thank you.

Just so you know, colleagues, Mr Baird is unable to be here this afternoon.

**The Chair:** Our time has expired. We do thank you for taking the time to come this afternoon to make your thoughtful presentation. It's appreciated.

1700

#### MUNICIPAL ELECTRIC ASSOCIATION

**The Chair:** I'd next like to call Mr Kelly, please, from Burlington Hydro and the Municipal Electric Association. Welcome. Could you please introduce your colleagues as well for the record?

**Mr Don Kelly:** On my left is Wasim Hassan, who is a staff member with the Municipal Electric Association, and on my right is Dave Baldwin, who is a consultant with DHB Associates, a consultant to the Municipal Electric Association.

I'd like to thank you for the opportunity to make this presentation. I am Don Kelly. I'm general manager of Burlington Hydro and my appearance today is on behalf of the Municipal Electric Association.

The Municipal Electric Association represents 306 local utilities which distribute approximately 75% of the electricity used in the province. The balance is sold by Ontario Hydro directly to large-use customers and to retail customers in generally less-populated areas of Ontario.

The MEA struck an ad hoc committee to review Bill 98 and on February 19 of this year mailed a submission to the Minister of Municipal Affairs. A copy of that document is attached to the written copy of this presentation.

We welcome the commitment made by Minister Leach at the initial standing committee hearing on Bill 98 at Oakville on March 24 of this year to remove the condition that 10% of the cost of hydro systems, along with water and sewer systems, roads, fire and police services, be contributed by the local utility from other sources.

Complications arising from the copayment provision were commented on in our submission referred to just now. With this issue having been addressed and the draft regulations which accompany Bill 98 having been issued, the balance of this presentation concentrates on specific areas where we believe the proposed legislation can be reworded to avoid potential problems in the future. In each area we discuss, we make proposals that we hope will clarify the intention of the legislation and make it more equitable in operation.

First, the 10-year average level of service: Paragraph 3 of subsection 5(1) specifies that the increase in the need for service attributable to the anticipated development must not include an increase that would result in the level of service exceeding the average level of that service provided in the electrical service area over the 10-year period immediately preceding the preparation of the background study.

The draft regulations concerning average level of service provide that this may be calculated as either the average level of service provided in the entire municipality or the average level of service provided in the part of the municipality to which the development charge bylaw will apply.

Service levels for such services do increase over time as a result of legislative and technology requirements. We question the use of an average which reflects previous lower standards. We suggest wording that would reflect current expectations in service standards, specifically: "That the need for electrical grid service be based on the level of improvements required by the anticipated development consistent with municipal practice, provincial policy and standards set forth by other regulatory agencies."

The treatment of uncommitted excess capacity: Upgrades to service by both business and residential

customers of a utility are accommodated from the excess capacity specifically implemented to sustain this type of electrical growth associated with development. What may appear to be uncommitted excess capacity is really slated for future electrical growth attributable over time to these new developments.

Paragraph 4 of subsection 5(1) states: "The increase in the need for service attributable to the anticipated development must be reduced by the part of that increase that can be met using the municipality's uncommitted excess capacity. How the uncommitted excess capacity is determined may be governed by the regulations."

Draft regulation 5(1) states: "Excess capacity is uncommitted excess capacity unless, either before or at the time the excess capacity was created, the council of the municipality expressed a clear intention that the excess capacity would be paid for by development charges or other similar charges."

Bill 98 requires that no future development charge recovery occur with respect to the increased need for service that can be met via the uncommitted excess capacity.

In order to ensure that uncommitted excess capacity built into works entered into prior to the application of Bill 98 is recovered from future development, we suggest that the regulations should include the following statement:

"That the cost of oversizing, which has been financed by utilizing other revenue sources, be recoverable from future benefitting development in order that those revenue sources be repaid."

Industrial expansion exception: Clause 2(3)(c) states that a development charge may not be imposed for development if the only effect of the development approval involved is to "permit the enlargement of the gross floor area of an existing industrial building by 50% or less."

Section 4 addresses the development charge permissible where an industrial building enlargement exceeds 50%. As written, this provision invites multiple building permit applications, each involving an expansion of under 50%, to avoid any development charge.

The proposed amendment to this section to address the issue mentioned above is: Offer the industrial expansion exemption on a one-time basis for each site.

Reserve fund draws: Section 35 states, "The money in a reserve fund established for a service may be spent only for capital costs determined under paragraphs 2 to 6 of subsection 5(1)."

The concern is that a development charge may be calculated on the basis of capital cost estimates for specific projects. Section 35 would appear to restrict reserve fund draws to those specific amounts. In many cases, spending may vary from estimates as projects are redefined or even substituted. Thus, the provisions are unduly restrictive on the use of such funds and could interfere with the provision of services needed by growth.

The proposed amendment to address this issue: Section 35 or a relevant regulation should make clear that a municipality/local board has flexibility to alter its development charge spending plan, provided that the draws are entirely for growth-related work as defined in Bill 98 and for the category of services applicable to each reserve fund.



For the record, two of the issues raised in our submission of February 19, 1997, have subsequently been addressed. These are the copayment provisions and draws from existing reserve funds. They are therefore not dealt with in this presentation.

In conclusion, it is very gratifying to see the government modify this bill as a result of legitimate concerns raised by stakeholders and allow 100% development charges for utilities. This alteration helps us to keep electricity rates competitive to encourage development in the province.

Thank you again for the opportunity to make this presentation.

1710

**The Chair:** Thank you very much. We will begin questioning with the NDP caucus, please.

**Mr Pouliot:** Thank you, gentlemen, for your time and your presentation. Indeed, you've gone to the very heart of clause-by-clause and a commendation indeed to offer some food for thought by way of amendments that you would like to see before the act receives third and final reading and royal assent and becomes law.

You preach for your parish and you do so very well. One cannot accuse you of prejudice. Under the umbrella of competitiveness, of passing the savings along, you become quite imaginative, and I think that's fair.

Would I be right in sensing in your presentation that at the municipal level — councils, municipal government — you are seeking assurance that the benefits, and the opportunities therefore, on the one hand could be taken away with a new class of taxes on the other hand at the council level? Because council can apply for a new class of taxes. For many of them it's a matter of revenues and it's also a choice between the residential level for which there are many, many, many and a large or small conglomerate, be it the industrial sector or the commercial sector. Are you afraid that once you finish the celebration that Bill 98 has gone through — development charges are being reduced; in some cases eliminated — the council will come right back with a new class of taxes and say, "Okay, we need the money"?

**Mr Kelly:** It's difficult for me to forecast what a council would do. We, speaking on behalf of all of the utilities, are obviously pleased with the direction that Bill 98 is going. The development charges for electric utilities are directly applied against rates. Our source of money is either capital contributions or rates. Printing money is not one of the options.

We definitely do apply and have applied any of the fiscal benefit accruing from development charges directly against rates. In Burlington's case, for instance, we have had rate freezes for 1994 and 1995; a 3% rate reduction in 1996 and a half a per cent rate reduction in 1997. I think that other municipalities have been doing — I like to think we're the best — at least equally as well.

**Mr Pouliot:** By way of supplementary, when I read "oversizing," would the parallel or the synonym be valid if I were to mention "overcapacitated," with an eye to fill the requirements of the future?

**Mr Kelly:** Yes. The point we are trying to make is that, being specific, one of the components of an electrical infrastructure is substations. Substations cannot be

built in one-kilowatt increments. Technically and economically, the average incremental size is in the order of 10,000 kilowatts. This could be perceived as excess capacity. In reality, it is not because it is going to be utilized for future growth as it occurs. As that station reaches capacity, an additional one is built.

So we are a little concerned about what we think is perhaps ambiguity or wording that could be misinterpreted in application to Bill 98 and we have suggested wording that we think clarifies this and avoids the possibility of misinterpretation.

**Mr Pouliot:** I am fully understanding and cognizant that engineers like to build things. This is what they do best. You find yourself overcapacitated and then you make an attempt, you cast at recouping some of your capital costs. Would I be wrong as a citizen, a consumer, to assume that this all comes out in the wash? You've just talked about a 3% reduction in your rate in the not-so-distant past, that it all comes out in the wash, that your capital costs are already incorporated in your rates and that your debentures, which is another cost, are reflecting this. Doesn't it all come out in the wash, or have I missed market elements and conditions over the past 30 years? You would like to recoup some of the costs on the development charges to reflect what you have been so kind to provide society with, your service. Your presentation says: "Give us back some of the money that we put in. Because we were wise and in our wisdom said we must address the future as well as the present, we built big. Now it's time for payback."

**Mr Kelly:** No, I wouldn't say that. I would say that in the case of the specific example I used of substations, we follow specific design criteria, at which point we have to add additional capacity, which is common, I would say, to most municipalities in the province.

I don't know if your thrust is, are we trying to recover overexpenditures from the past for providing unnecessary overcapacity? If that is the question, my answer is no. In the distribution sector, which we are in, unlike Ontario Hydro, in which you are dealing with generation, in which you are looking at a time frame from original decision to throwing the switch and closing a generating station of seven to 15 years, our time frame in putting in distribution assets is a lot tighter because the material can be secured faster. We don't have to go through the same design processes. It's a much simpler, for lack of a better word, area than the area of generation and transmission.

**Mr Pouliot:** Excellent and fair.

**Mr Ernie Hardeman (Oxford):** Thank you for your presentation. I just wanted to go over a couple of areas quickly. On level of service — and there's been considerable debate about how one should define a level of service for development charges — in your presentation you pointed out "consistent with municipal practice." Maybe you could clarify for me that that's not what I think it means. That would mean it would be the same as it presently is; that whatever level of service the municipality deems appropriate now when it's doing the development charges would be the level of service that it could put into the development charges for recouping for the future. Would that be the right interpretation of "consistent with municipal practice"?

**Mr Kelly:** What we're trying to address here is concern that "not to exceed a 10-year average level" is perhaps a little too rigid. I can appreciate the concern, say, from the development industry, which might view this as an attempt to goldbrick a design to have super-reliability that is above and beyond what is required. That is not our intent.

What we are facing is increasing expectations and demands by our customers, particularly as regards power quality and service reliability, particularly in those areas that do a lot of data processing with computer equipment or utilize computer equipment for process control. There are guidelines that are established by various agencies: There are some basic regulatory standards, like the Canadian Standards Association standards; there are guidelines from our own Municipal Electric Association, Canadian Electrical Association etc.

We are concerned that if there is not a little more flexibility built into the system, we may be either deliberately underdesigning and providing what have become inadequate service levels, or inappropriately funding the increased service levels out of general rate revenue. We're cognizant or aware of the concern that we don't abuse this privilege, and that's why we came up with the wording we did. We think it provides the flexibility without unduly opening the door for abuse by utilities.

**Mr Hardeman:** One concern that's been expressed by the development industry in particular relates to, if you don't have some form of averaging or a way of establishing a level of service, it becomes somewhat unfair, as even in your case — this is true in other services too, but particularly in yours; we'll refer to yours. If the standards have gone up, if you've changed the design patterns or the design functions of the service and the new growth has to pay for that higher level of service while the existing growth is still on the other level, immediately upon paying your development charges and becoming a ratepayer or a user, a consumer in that system, your rates will now cover the upgrading of the others. Do you see that as a problem with not setting a standard level of service?

1720

**Mr Kelly:** I can certainly see that as a concern. Do I think the world will end if the act maintains the rigidity? No, I do not. It is merely a suggestion which we feel would be advantageous and worthy of consideration.

**Mr Mario Sergio (Yorkview):** Mr Kelly, thank you very much for coming down and making a presentation to our committee. Just a couple of questions within the time that we have. We have had presentations that said, "We like the proposal as we see it, because this would eliminate some of the abuse from some municipalities." You have just said that this would perhaps eliminate some of the abuse from some of the utilities as well. So there's some give and take there from some of the presenters.

I wonder if you can give a little bit of a perspective, not from where you stand — and I can understand where you're coming from — but from a local municipality's point of view, where it is charged with the responsibility of providing a number of services on behalf of the local community. I understand what developers have been

saying, and I'm sure we will hear — we haven't finished yet — that they are all interested in providing those necessary services for them to build homes or whatever.

I'm sure you have heard Mrs McCallion, your neighbouring mayor, say that if this goes through we're going to have a problem. If you were a municipality charged with the responsibility of providing a number of other things, would you think this act impedes the local municipality in providing those other services that are most necessary to the vitality and everyday activities of a new community?

**Mr Kelly:** I'm not trying to avoid the question, but —

**Mr Sergio:** You can if you want.

**Mr Kelly:** — the area of my responsibility and the responsibility of the Municipal Electric Association is restricted to the provision of electrical energy. I have no municipal service experience outside of this sphere. To offer an opinion on the impact to a municipality of changes proposed in Bill 98 as far as other services are concerned is beyond my experience to fairly comment.

**Mr Sergio:** The heading of the bill says "to promote job creation and increased municipal accountability." Do you think this will create jobs in the industry?

**Mr Kelly:** Again from the electrical perspective, the answer is yes, because I think it is going to make our rates competitive. As I indicated to Mr Pouliot, we have been able to accomplish, along with other municipalities, a reasonable level of rate control.

I have no doubt, from listening to positions put forward by representatives from the industrial and commercial sector, that electrical rates are of importance. They are increasing in significance. The day of penny power is gone. What was negligible has now become a more important factor in decisions regarding expansion or relocation. When I started my career, electric energy was down here as a factor in comparison to labour market, transportation and so on. That's not the case today.

**Mr Sergio:** We've had some growth, I would say, since those days. I understand. Thank you for your presentation.

**The Chair:** Gentlemen, on behalf of the members of the committee, I thank you for taking the time to come this afternoon to make a presentation. We appreciate hearing your advice.

#### TORONTO REAL ESTATE BOARD

**The Chair:** Mr Vail, please. Good afternoon. Welcome. If you'd like to introduce yourself for the record, and your colleagues as well. We look forward to your presentation.

**Mr John Vail:** Madam Chair and members of the committee, my name is John Vail. I'm a member of the board of directors of the Toronto Real Estate Board, TREB, and municipal chair of its government relations committee. With me today, on my far right, is Pat D'Addio, he's a fellow Toronto Real Estate Board director and provincial chair of government relations. Fareed Khan, on my left, is the board's policy adviser for government and legislative affairs, and Von Palmer, on my right, is the board's policy analyst in the same area.



Thanks to the committee for allowing us the opportunity to appear before you today, especially given that it's 5:30 in the afternoon, to express TREB's views on Bill 98. Since our time is limited, the remarks are going to be brief.

We'd like to start out by saying that the Toronto Real Estate Board supports Bill 98's provisions to reform the way development charges are assessed for the funding of growth-related services and facilities. We also support the proposed restrictions on facilities and services that are permitted with these fees.

The Toronto Real Estate Board believes the Development Charges Act has been one of the key pieces of legislation which has been a significant barrier to housing affordability and economic development for several years. The principles contained in the proposed legislation are a good step to improving fairness in the system, providing greater accountability, reducing the costs of home construction and stimulating industrial expansion.

From TREB's viewpoint, Bill 98 would still allow municipalities the flexibility of providing a wide range of services and facilities needed to support new residential growth and industrial development in their respective communities. While municipalities have argued the legislation would force existing taxpayers to fund new growth services, we do know that during the past several years development charges have become excessive in some municipalities, to the point where new homes and new rental properties have become unaffordable and economic development has been hampered.

Consequently, an unfair onus has been placed on new home buyers, forcing them to fund public facilities as the price of home ownership. These charges have also contributed to the high cost of development in the GTA. In short, the system is broken and needs to be fixed.

When the current Development Charges Act was introduced in 1989, TREB criticized the legislation at the time because it allowed the use of development charges to finance soft services and also allowed for the introduction of lot levies. We're disappointed the government has chosen not to address education development charges, and instead renamed this section of the act the Education Development Charges Act.

TREB, along with other real estate industry groups, has long held that development charges for education are unfair, since they will lead to two education systems in the province, a first-class system for well-off municipalities with a high level of growth, and a second for those less well-off with a lower level of growth. Education provides a general benefit to society and the public, so the province as a whole should bear these costs.

Bill 98 would require municipalities to fund a portion of services and facilities necessitated by new growth. However, municipalities would not be able to levy charges for other projects, including municipal administrative offices, hospitals, parkland acquisition and cultural, entertainment and tourism facilities.

This makes some sense, because not only does the legislation restrict the levying of charges to services necessary for new growth, but also because the types of services and facilities to support new growth end up benefiting existing residents. We believe copayment and

the exclusion of community-wide services would force politicians to exercise greater prudence when imposing these fees.

For the record, during consultations held prior to the introduction of Bill 98, TREB did call for reforms to:

- (1) Improve fairness by redefining the scope of services eligible for development charges financing into basic, discretionary and excluded services, with some type of copayment between municipalities on the one hand and the development industry on the other for basic and discretionary services.

- (2) Reduce costs by establishing reasonable and sustainable levels of service.

- (3) Increase accountability by forcing municipalities to analyse the long-term cost implications of operating, maintaining and replacing the services funded from development charges.

- (4) Require municipalities to explore alternate means of financing these growth-related services.

#### 1730

TREB's understanding is that development charges are a way in which municipalities can require those who develop land to contribute to the capital costs necessary to service new development. This means joint responsibility and the fair sharing of costs between new growth and existing taxpayers.

We feel that insufficient attention has been given to the economic impact that rising development charges have had on the cost of new homes and on expanding businesses over the years. We can tell you that they have imposed a significant barrier to housing affordability.

In the GTA today, development charges represent over 10% of the cost of an average starter home, but when combined with all other government taxes, this cost climbs to almost 25%. These fees ultimately affect affordability of resale homes, since costs are passed on in the form of an increased sale price. The impact of charges on the business sector is the loss of jobs and investment to other jurisdictions with lower development costs.

As you are aware, the nature of the housing market has changed dramatically from that of the late 1980s, when the current Development Charges Act was enacted. The 1980s, of course, was a period of skyrocketing real estate prices and strong economic growth and job creation. Today jobs are somewhat insecure, employment is shifting to contract and part-time, and real estate values are now only beginning to edge up slightly, after a tremendous loss of equity over the past several years. Consumers today are more interested in paying down debt than accumulating it. The 1990s home buyer is very price-conscious and sensitive in a very competitive housing market.

We realize that development charges are needed to pay for new growth services. That's not in dispute. What TREB has a problem with is the way the charges have been calculated and the types of facilities and services they are used for. We therefore support the following, which are reflected in the legislation:

- (1) The costs of new growth services must be contained by establishing reasonable and sustainable levels of services and by basing development charges on the actual benefits related to new growth. A system must be devised

whereby taxpayers can assess the level of service they want and are prepared to pay for.

(2) Those services that end up benefiting the entire community must be paid for by all residents, and if this necessitates a copayment formula between the development industry and municipalities, then TREB supports it. This is a matter of fairness.

(3) Municipalities must be required to analyse the long-term cost implications of operating, maintaining and replacing all the services funded from development charges, because these services are an ongoing cost to existing and future taxpayers. This will provide greater accountability.

We've taken note of Bill 98's provisions to help address the high cost of development in the industrial-commercial sector. In particular, the exemption from development charges for expansions of up to 50% of the existing growth area of industrial facilities and allowing municipalities to defer or exempt industries from payment of development charges are welcome provisions which should stimulate this sector.

Even though we have no major problems with what is being proposed in Bill 98, for the record we'd like to point out that the legislation is a softer approach from what we had earlier advocated. A recent government-proposed amendment to Bill 98 which would no longer require municipalities to contribute 10% of the costs of hard services for new growth comes as a bit of a surprise, since we believe copayments would hold local politicians more accountable and force them to exercise greater prudence when imposing these fees.

TREB also called for:

Development charges and the general local tax base to equally share the costs of soft services such as arenas and recreation facilities, whereas Bill 98 calls for development charges to pay 70% of the costs and municipalities 30%;

Waste management services to be excluded from development charges and funded through other means; and

Transit, which benefits the broader public, to be funded equally by development charges and general tax revenues.

It was disappointing to learn that negotiations between the Urban Development Institute and GTA municipalities to help resolve the contentious issue of funding new growth services have somewhat broken down. In our assessment, it appears some GTA politicians do not believe that savings from a reduction in development charges would be passed on to new home buyers.

**Mr Gerretsen:** I wonder why.

**Mr Pouliot:** I wonder why. The track record is impressive.

**Mr Vail:** Exactly. The development industry and municipalities in the outer GTA are at an impasse, and some reassurance from the province that savings will be passed on to new home buyers is needed. We recognize that the failure of talks between both parties runs deeper than guarantees of savings being passed along, and has more to do with funding issues than who pays for what.

While it appears a difficult task to offer such guarantees, especially when you factor in numerous other market forces that influence the price of new homes, the

province should make efforts to bring both the development industry and local politicians together to explore ways that would reassure the public that any savings are passed on to new home buyers. This will go a long way to establishing some trust needed for any new arrangement to succeed.

As a start, it may be that the time has come to consider making development charges a more visible tax to the consumer. Potential home buyers should be able to easily identify what portion of the purchase price of the home accounts for development charges, which at the end of the day results in a better-informed consumer. Consequently, any attempts by government to increase these levies would be more visible to the consumer and any savings from reductions could be more readily identified.

To summarize, the Toronto Real Estate Board believes that by establishing reasonable and sustainable levels of services and basing development charges on the actual benefits related to new growth, the costs of new growth services can be contained.

As a matter of fairness, those services which end up benefiting the entire community must be paid for by all residents, and to provide greater accountability, municipalities must be required to analyse the long-term cost implications of operating, maintaining and replacing all services funded from development charges, because these services are an ongoing cost to existing and future taxpayers.

Thank you very much for the time today.

**The Chair:** We'll begin with the government caucus, Mr Maves. There's just over two minutes per caucus.

**Mr Bart Maves (Niagara Falls):** Thank you, gentlemen, for appearing today and for your presentation. Right on the first page of your report, you talked about the impact of development charges on rental properties. Since about 1975, when we brought in rent controls, the number of rental properties that have been built has just plummeted, and has stayed quite low, especially in the Toronto area, for years.

We're addressing that, but I wonder exactly what kind of impact development charges have on rental property and the construction of rental properties in the Toronto area.

**Mr Fareed Khan:** Development charges are only one of the many costs involved, whether it's homes for sale or rental properties, and yes, development charges do have an impact on the construction of rental housing. However, given that most of the rental housing that's happened over the last number of years has been funded through the government, through non-profit housing programs and so forth, it's difficult to assess the exact impact.

Should development charges be reduced along with a whole host of other costs — because you're looking at things like, rental housing does not get a GST rebate the same as homes for sale get, there are other costs built in in terms of provincial taxes on building materials and so forth. You'd have to look at that all as a package and not just look at development charges.

When we've addressed this issue, we've never said that just by addressing any one single aspect of the cost



related to constructing a home or rental building, that's going to solve the entire problem. That is one part of it, and all those need to be addressed. We're hoping the legislation will go forth to address this and then we'll see improvements in other areas as well.

**Mr Vail:** When you mention rental property, you should also consider the impact it has had on rental commercial-industrial buildings for small business, for example. It's had a huge impact on that type of construction for business as well.

**Mr Maves:** I know property taxes are about four and a half times on rental properties what they would normally be, and that could cause rents to be quite high in the Toronto area too.

Another one: On page 3 you used the phrase "rising development charges." I was going to ask the member from the taxpayers' federation this, because I know they like to watch governments to see where taxes are going, but over the years that development charges have been with us, have we seen a larger growth? I know all municipalities are different. Some have killed growth, some have reduced them dramatically, and others haven't.

In general, do you think we've seen faster growth and a larger growth in development charges as a revenue generator because it's a hidden tax, as opposed to, say, property tax which is more visible?

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**Mr Von Palmer:** Actually, I can't give you a precise percentage breakdown, but to answer your question, there has been quite an excessive growth in terms of development charges. There's a handout that we passed around that shows you what the charges are right now across the GTA. You'd note, for example, that up in Vaughan and Woodbridge the total development charges are about \$20,000. Pat can probably tell you that when they started out in Woodbridge, those charges were very low and they've gone up quite a bit in the last several years, so that's an indication as to what's been going on in the GTA.

Within Metro, obviously, that's a non-issue, and you can tell that the charges are a lot lower within Metro. But once you go beyond Metro, you're seeing some substantial hikes and the numbers will attest to that.

**Mr Khan:** The other thing I might add to that is that when the development charges are levied, there are no specifics as to what the charges are going for. We've heard anecdotal evidence over the years where levies have been charged that would go for things like art galleries or municipal offices and other structures within a municipality that have nothing to do with providing services to a new development.

**Mr Gerretsen:** I can't think of an industry that is more influenced by supply and demand and competition than the real estate industry throughout the province of Ontario. That's why I find it so fascinating for you people to say that these development charges are having a major effect. Let me at the outset say that if you had no taxes and if the cost of material was next to nothing, obviously all the houses would be cheaper. There's no question about it. But it just so happens that those areas that seem to have the highest development charges are

also, the way I understand it — and I'm not from Metro — the high growth areas in this province.

What gives here? If these development charges are so high in Vaughan, in Oakville, in Markham and Ajax etc, those are the areas that are growing. It seems to me that areas such as East York and Toronto and Etobicoke, where you don't have development charges, are not growing at all. How come, if they have such a great effect on the amount of housing that's being built?

**Mr Palmer:** This charge isn't meant to compare and contrast in terms of Metro and the GTA. We're not saying, "Oh, gee, within Metro the charges are so low and then you go to the rest of the GTA and they're pretty high." We're saying I'm sure there are good reasons why they're pretty high in Vaughan and Woodbridge, and these are high growth areas, but the problem that we, the Toronto Real Estate Board, have is (a) the way these charges are figured out and (b) the types of things that they cover.

Talk to developers, talk to the people who are out there and they'll tell you —

**Mr Gerretsen:** I agree with that, sir. That may very well be so. But you can't say that those kinds of costs necessarily, as you're saying in your brief, affect the resale value of homes. The resale value of homes surely, as we saw in the 1980s, has everything to do with demand and supply and almost nothing to do with the cost of construction or with these kinds of taxes.

**Mr Palmer:** We've never said that development charges are the only thing. What we've said in our submission is it's one of several.

**Mr Gerretsen:** You're saying here, "These fees ultimately affect the affordability of resale homes since these costs are passed on in the form of an increased sale price." I would suggest to you that whatever the resale home goes for later on is purely determined by supply and demand at that time, and it's got nothing to do with whatever development charges may have been when the house was built.

**Mr Khan:** Not necessarily, because when you have prices elevated because of development charges in the new home sector, it pushes up the base price or the overall price of the general housing market. So if you have higher prices on the new home side — and we saw this in the 1980s, where you had prices going up on new homes and that in effect had an upward pressure on resale homes as well. Part of it was supply and demand, but part of it was also the fact that the entire price range had been pushed up, so you had less affordability.

**Mr Pouliot:** It's a renewed pleasure. Weren't you the same impressive panel that paid us the compliment of your visit under Bill 106, the big one, the assessment?

**Interjection:** Yes. We were there.

**Mr Pouliot:** I recognize you people. I must congratulate you. You're very consistent.

**Interjection:**

**Mr Pouliot:** There again, you're prolific.

I recognize you're consistent because there too you treated your situation vis-à-vis 106 as — in fairness, your situation is unique, and you're to be commended. You're seeking a fair playing field. You're not opposed to some taxes.

I think you're right, and figures will attest that the development charges in some cases presented some with an opportunity to levy, because when you go from whenever it was imposed and then you follow, you really have to be hard-pressed not to say: "Oh, I see. So it was an opportunity to levy." It doesn't mean it's all bad or it's all good, because the money is taken on one hand and goes for general purposes. But if you're directly impacted, if you're in that game, you may suffer more or less, depending on your circumstances, and in these cases you must feel that you were targeted, because of the opportunity.

Housing prices — sure, I would imagine every component counts a lot, and service charges will be passed along. People have to respect the amount of debentures, for instance, by way of being over-extended, all the way to junk bonds from — well, not so much Olympia and York; they were big enough and they had that opportunity for travel, but Cadillac Fairview, Trizec, and there were others. It all comes out in the wash. This too was an important component of the price of housing, because they had to pay their creditors. Otherwise, the vultures would descend on them by way of the vulture funds.

Interest rates: Mr Greenspan. The next round is May 20, and then it's July. We don't know what will happen, but if corporate profits keep being very nice in the first and second quarter, it will put pressure on wages, because people will line up and say, "Me, too. I want a wage increase. I haven't had one for so long," and Greenspan may, in his wisdom, go to 25 basis points. If he doesn't in May, then there will be more pressure in July to go 50 basis points. I don't know, but that too has a very high impact on, "Am I going to buy a house or not?"

The demographics is another impact; the economy. Things are going well — a \$1.2-billion surplus to be announced in two weeks. A little padding, but that's okay, too. So things are going fairly well, and that means I may buy a house just as much, if not more, than development charges. Would I be right, Mr Vail?

I know you're not here to talk about that; you're here to talk about development charges. I respect that.

**Mr Vail:** Definitely, all those factors have a major impact on the consumer's decision to buy a home or to have any big-ticket item. Also on the business community as well. In the business community we have to put a lot of emphasis on the development charge aspect on industrial-commercial growth as well, and on jobs here in the GTA particularly.

**Mr Pouliot:** I've got to ask you one last question, and I thank you for your expertise. I live way up north and am of very moderate means, so when they talk quickly about the way things operate, I'm at a loss — but that's okay; I can learn.

I want to ask you, Mr Vail, — and you perspire honesty and sincerity: Why is it that when people say, "Will the savings be passed along to the consumers?" — I believe so, but why is it that some people around are sceptical? I see some of them roll their eyes and they don't quite believe that you will pass it along to the consumer. You have a social conscience.

**The Chair:** Question, please.

**Mr Pouliot:** Why is it that there's some difficulty penetrating? I believe you, but so many others seem to be

doubtful. Why is it? If you get a savings, surely it's going straight to the consumer, is it not?

**Interjection:** We would hope so.

**Mr Vail:** That's what we advocate, that this happen, absolutely.

**Mr Pouliot:** If you don't do that, you become less competitive, because somebody else will. Is that what you're saying?

**Mr Vail:** That is it.

**Mr Pouliot:** Well, well, well. Thank you. I'm convinced now.

**Mr Vail:** Fareed, did you want to add to that?

**Mr Khan:** I just wanted to add, that is one reason. There is cynicism out there among the public about whether these costs are going to be passed on, which is why one of the key points we did make in our presentation was to somehow make it more visible, factor it out of the price of the homes so that the people who are buying clearly know what charges they are going to be paying when they purchase that property. That way they can shop and compare between various municipalities.

**Mr Pouliot:** So Mr Campeau would pass the savings along if he were still with us?

**Mr Vail:** It is such a difficult issue for the home buyer and for the business community when it isn't visible. If people really knew it was \$15,000 to \$20,000 a house, they might think differently about this issue. It's a highly technical issue, as you know.

**The Chair:** Gentlemen, we thank you for coming before the committee this afternoon. If you've been to other committees, we also appreciate your advice to the government.

Colleagues, we have two issues to finish up before we adjourn. Your advice, please: Do you wish that the three groups who weren't able to be scheduled this afternoon send in written submissions?

**Mr Gerretsen:** Are they here?

**The Chair:** No, they aren't.

**Mr Gerretsen:** Not in the crowd?

**The Chair:** No.

**Mr Hardeman:** I would suggest we ask them to send in written submissions, then, Madam Chair.

**The Chair:** Agreed? Okay, thank you. We'll do that.

Secondly, clause-by-clause has been scheduled for Monday, April 28. Is there agreement as to when amendments will be filed with the clerk before distribution to committee members?

**Mr Gerretsen:** Can you do anything about the other thing, or not?

**Mr Hardeman:** I could address the other issue, Madam Chair. I think Mr Gerretsen requested or asked us to look into the possibility of changing from Monday to a different day. We have checked into changing it to Wednesday, which would be another day that this committee sits. They are to hear Bill 107, I believe. We have checked with the people in charge of that bill. They will not be able to have their amendments ready for clause-by-clause for Monday's hearing.

**Mr Gerretsen:** It was my understanding that those amendments were to be in by Friday noon as well.

**Mr Hardeman:** Yes, and I think the issue is to deal with those amendments by the ministry to review them



for Monday. I've been informed they can't. Whether they're technical or not —

**Mr Gerretsen:** No, but the point is that the amendments for both bills were to be in by Friday at noon, or at least that's what the request is. So I don't see any reason why —

**Mr Hardeman:** I'm just relating what was said to me by the members or the Ministry of Environment. The only option was to change from Monday to Wednesday, and that's not available. If we change it to a different day, it would require the agreement of the Legislature, as opposed to the agreement of this committee. With that, I would just put forward that we should stay with Monday.

**Mr Gerretsen:** I think the record should note, then, that all amendments are to be in for both bills by Friday noon and that the government is unwilling to accommodate the request to have this done on a different day.

**The Chair:** The amendments for Bill 98 hadn't yet been agreed to for Friday noon. We didn't agree to that at the last meeting.

**Mr Gerretsen:** It's my understanding, from speaking to the 107 critic in my party, that the amendments had to be in for Friday noon on 107.

**The Chair:** For 107, yes.

**Mr Gerretsen:** Okay. If they're not being cooperative, that's fine.

**The Chair:** So we're aiming for Friday noon, then, for Bill 98?

**Mr Gerretsen:** I would like to discuss that with the other members of our caucus, and we'll let you know in due course.

**The Chair:** All right. Mr Pouliot?

**Mr Pouliot:** I must apologize. By virtue of limited numbers, I don't, in this context, belong here. I'm just subbing for our critic. It's difficult for Madam Churley to take a decision for my colleague, but I'm sure she will be happy to comply with the wish of the majority. Is it next Wednesday you're talking about?

**Mr Hardeman:** No, Monday.

**Mr Pouliot:** Monday. Oh, yes.

**The Chair:** Monday for clause-by-clause for Bill 98, and amendments in by Friday noon.

**Mr Pouliot:** Totally reasonable.

**Mr Gerretsen:** We don't agree with that.

**The Chair:** Duly noted.

**Mr Gerretsen:** If you can't cooperate, we don't cooperate. It's as simple as that.

**The Chair:** Just so that you know, the fact summary will be distributed tomorrow to all colleagues.

The committee stands adjourned. We'll meet on Monday afternoon.

*The committee adjourned at 1754.*





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Mr Mario	Sergio (Yorkview L)

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## **Assemblée législative de l'Ontario**

Première session, 36<sup>e</sup> législature

# **Official Report of Debates (Hansard)**

**Monday 28 April 1997**

# **Journal des débats (Hansard)**

**Lundi 28 avril 1997**

## **Standing committee on resources development**

## **Comité permanent du développement des ressources**

**Development Charges  
Act, 1996**

**Loi de 1996 sur  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
RESOURCES DEVELOPMENT

Monday 28 April 1997

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU  
DÉVELOPPEMENT DES RESSOURCES

Lundi 28 avril 1997

*The committee met at 1546 in committee room 1.*

## DEVELOPMENT CHARGES ACT, 1996

LOI DE 1996 SUR LES  
REDEVANCES D'AMÉNAGEMENT

Consideration of Bill 98, An Act to promote job creation and increased municipal accountability while providing for the recovery of development costs related to new growth / *Projet de loi 98, Loi visant à promouvoir la création d'emplois et à accroître la responsabilité des municipalités tout en prévoyant le recouvrement des coûts d'aménagement liés à la croissance.*

**The Chair (Mrs Brenda Elliott):** Colleagues, welcome to clause-by-clause discussion of Bill 98.

Without further ado, we'll get right down to work. There's lots before us. Are there any questions, comments or amendments to the bill and, if so, to what sections? We'll begin with section 1.

**Mr Ernie Hardeman (Oxford):** Madam Chair, I move that the definitions of "municipality" and "upper-tier municipality" in section 1 of the bill be struck out and the following substituted:

"municipality" means a locality the inhabitants of which are incorporated;

"upper-tier municipality" means a county, a regional, metropolitan or district municipality or the county of Oxford."

**The Chair:** Any questions, comments or discussion on this amendment? If not, I'll put the question. All those in favour? Opposed? The motion is carried.

Any further amendments to section 1? Seeing none, shall section 1, as amended, carry? All those in favour? Opposed? Carried.

Moving now to section 2.

**Mr Hardeman:** I move that clause (a) of subsection 2(3) of the bill be amended by adding "or" at the end and that clauses 2(3)(b) and (c) of the bill be struck out and the following substituted:

"(b) permit the creation of up to two additional dwelling units as prescribed, subject to the prescribed restrictions, in prescribed clauses of existing residential buildings."

**The Chair:** Any discussion or questions? I'll put the question, then. All those in favour of the amendment, as read? Opposed? Carried.

Is there a Liberal amendment?

**Mr Mario Sergio (Yorkview):** I move that subsection 2(3) of the bill be struck out.

**Mr Rosario Marchese (Fort York):** Madam Chair, if I could, I ask whoever is moving motions if they could briefly give an explanation of what they're doing. I

would find that helpful. I say this because we've had two other members of my caucus as part of the team that was doing the out-of-town stuff, so some of us may not be as familiar as we would like. If we could have the parliamentary assistant do a brief explanation of the amendments, I'd appreciate it.

**The Chair:** Okay. Mr Sergio, did you want to say anything about this?

**Mr Sergio:** I have a long explanation. I don't know if you want to do that —

**Mr Marchese:** Oh, please, yes. I want to hear it.

**Mr Sergio:** What it does in a nutshell is mandate the reduction of capital works. The long explanation is that this motion would delete the provision that makes certain growths related to investment ineligible. We feel it is not appropriate that the provincial government decides what is or is not appropriate for a community to build, or to place restrictions on how investment is financed. Mainly it deals with the autonomy of the local municipalities, how they finance certain projects and so forth. That's mainly what the clause does. That's the short version.

**Mr Hardeman:** I will not be supporting the amendment. Obviously the intent of the bill is to define what are services that should be fully funded by development charges and those areas where services should not be covered by development charges. This would take us back to where everything was eligible, and we don't think that's appropriate.

**The Chair:** Any further discussion? Shall the amendment carry? All those in favour? All those opposed? In my opinion, it is lost.

The next amendment is also a Liberal amendment.

**Mr Sergio:** I move that section 2 of the bill be amended by adding the following subsection:

"Limit on industrial expansion exemption

"(3.1) Clause (3)(c) and section 4 do not apply with respect to the enlargement of a building if the building has been enlarged before and no development charge was payable in respect of that previous enlargement because clause (3)(c) applied or the development charge that was payable was reduced under section 4."

I think the clause is self-explanatory. I don't know if you wish me to expand further on that.

**Mr Marchese:** If you have some explanatory notes, yes.

**Mr Sergio:** This again limits most of the limits on industrial expansion with respect to the partial exemption. If motion 2(3) to delete this exemption fails and the exemption remains in the bill, this motion would limit the exemption to allow only on 50% of the industrial property. Some witnesses were worried that this particular exemption would relate to incremental industrial expansion.



sion over 49% of the additions over one time and cause cumulative infrastructure planning problems for a community of a certain age or fiscal capacity. That's broadly the meaning of the amendment.

**Mr Hardeman:** I will not be supporting this amendment. I think our intent is to encourage industrial development. It should not be discouraged simply by adding development charges for services that the industry already had available to them. We think this would be an inappropriate way to limit it to some but not to all. We think it should be left open that 50% expansion for an industrial property should be exempt from development charges.

**Mr Marchese:** The Liberal motion says "and section 4 do not apply with respect to the enlargement of a building if the building has been enlarged before." It doesn't give a time, but we assume before the bill. Mr Hardeman, you didn't comment on that. Your explanation's rather different. I understand what you're saying, but it doesn't comment on this particular part, which appears to me, on the face of it, to make sense.

**Mr Hardeman:** My interpretation of the resolution is that where it says "no development charge was payable in respect of that previous enlargement because" it doesn't necessarily imply that the expansion took place prior to this development charge bylaw. It just says if expansion had taken place before, it would not apply to have an exemption the second time for an expansion. I believe all expansions should be encouraged and, particularly if it does not require further servicing, they should not be obligated to pay further servicing for that expansion.

**Mr Marchese:** Madam Chair, does the ministry person have the same explanation? Is it the same?

**Ms Joanne Davies:** The same, Mr Marchese.

**Mr Marchese:** Okay.

**The Chair:** Any further discussion? Seeing none, I'll put the question. Shall the amendment carry? All those in favour? All those opposed? The motion is lost.

Moving to the next amendment, a government amendment.

**Mr Hardeman:** I move that subsection 2(4) of the bill be amended by adding the following paragraph:

"4.1 The provision of waste management services."

This is to add waste management services to the ineligible list of services for development charges.

**Mr Marchese:** I personally am one of those who believes that waste management should be part of the services that should be covered under development charges. I think that affects everyone in the community. Clearly that's the argument Mr Hardeman wants to make as to why they should be out, but I believe they should be part of those development charges. Mr Hardeman, you're making an argument that they shouldn't. They shouldn't because?

**Mr Hardeman:** I think the main reason for waste management being exempt is that the general direction in the province is to have waste management pay for waste management through direct cost. Landfill sites are paid through a collection of user fees at the landfill site. The collection in a lot of cases is going to the direction where the user is paying. It's inappropriate to have the new

development pay for the waste management capacity and then turn around and pay for filling that capacity for future users, for the next site, through development charges. In fairness, if there is a way for everyone to pay their fair share as it's being consumed, it should not be put on the backs of new homeowners to create the facilities.

**Mr Marchese:** So you don't believe that when there's new development, that should be part of the cost, to reflect the fact that that's going to cause a particular problem for the larger community around there?

**Mr Hardeman:** As it relates particularly to the land-filling issue of waste management, if you looked at the majority of the sites presently, the cost, the tipping fee to fill that landfill site is being put into reserves to find the next landfill site, so in fact the users are paying for the future capacity. We don't think it's appropriate that new homeowners should also pay for that new capacity in a development charge and then turn around and, for the next five or 10 years, pay for their square footage in that landfill site through user fees too. I think that would be considered, in my opinion, a double taxation.

**Mr Marchese:** The tipping fees are already covering the future cost of this, is what you're saying?

**Mr Hardeman:** Yes, they are. Many of the tipping fees presently are being reserved in order to find future methods of waste disposal.

**Mr Marchese:** And those tipping fees are sufficient enough for the new development, for the community, the general and the new community, not to worry about it?

**Mr Hardeman:** I'm not here to debate the issue of whether municipalities have sufficient capacity in their reserves to find a new landfill site or whether they have chosen to set their user fees at a sufficient level to do that, but the possibility of doing that definitely exists and there are communities that would be doing that through a user fee.

**The Chair:** Any further discussion?

**Mr Marchese:** A recorded vote on this one, Madam Chair.

**The Chair:** Okay. Shall the amendment carry?

**Ayes**

Fisher, Grimmer, Hardeman, Maves, Munro.

**Nays**

Hoy, Marchese, Sergio.

**The Chair:** The motion is lost.

**Clerk of the Committee (Ms Donna Bryce):** I believe the motion was carried.

**The Chair:** Oh, sorry. My apologies. It was carried.

The next one is a Liberal motion, I believe.

**Mr Sergio:** I move that subsection 2(4) of the bill be struck out.

This again deals with the authority conveyed upon the municipality and restricts the local municipality to use their power for certain services that they now enjoy. The clause in the bill, as it is proposed, does not allow the municipality to use the development charges for such things such as community centres, cultural centres, theatres and stuff like that. So that's the intent of the amendment.

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**Mr Hardeman:** Again, I would oppose the resolution, as it does take the act back to the existing act where all services would be eligible. The section that's being referred to in this motion is the section that declares certain services ineligible for development charges. I think it's one of the major intents of the act, and this would definitely detract from the act as the government has put it forward. I would not support the motion.

**Mr Marchese:** I want to support this motion and support the current way in which we raise money for these facilities. I've never been supportive of the current government's position to make some of these services ineligible. I really believe the government is making a mistake in this regard. We should leave the municipalities the power and the right to include what I find to be important facilities or infrastructure elements of a community. I believe that museums, theatres, art galleries, public libraries especially, land for parks and other tourism facilities are things that should be part of what we charge in terms of development charges. I think it makes for a healthier community. When you take these elements out, it's going to complicate the lives of many municipalities, no doubt. It will make it very difficult for municipalities to raise the money to do what they used to do through those development charges.

You know, parliamentary assistant, that your government has been chopping support for municipalities. I know you like to deny it as best you can. You haven't been chopping. No one in your government is doing that. I understand that, but the municipalities know it. They have been getting less and less support from you in the last two years, where 40% cuts have made it impossible for municipal governments to deal with their own communities and service their own communities. So when you do something like this, Mr Hardeman —

**Mr Hardeman:** Oh, I'm listening.

**Mr Marchese:** I know you are — you're going to be helping the developers who have convinced M. Leach and M. Harris, your buddies, that this is a good thing. We know that municipalities don't believe this to be a good thing. We know that now they're going to have to find money somewhere — I don't know where they're going to find it — to build these facilities into their communities.

I know that when you do this, the price of the new housing will not go down. You and your friends are going to make that argument, your developer friends certainly make that argument, but we know the price of housing will not go down as a result. So not only are the new people buying not going to be helped by this measure, but the municipalities will find themselves with a shortfall, and they won't know what to do. They're certainly going to have to do what you've been doing for the last two years, and that is to chop all over the place. That's what they're going to do. They're not going to have the kind of infrastructure that makes for a good community.

That's what your motion does, and this motion presented by Mr Sergio tries to undo it. I wanted to speak clearly on the record in this regard, and I want a recorded vote after Mr Hardeman responds.

**Mr Hardeman:** I just want to clarify one of the issues that was raised by Mr Marchese and the fact that the list of excluded services does not include libraries. As you were referring to libraries, the excluded services do not include libraries. They are still included in the list of services eligible for development charges. That was just to clarify for the record.

**Mr Marchese:** The reference you made to that is in paragraph 1, is that it? Libraries are excluded. Is that in subsection 2(4), paragraph 1? Is that where you're making your reference?

**Mr Hardeman:** Yes. In the first paragraph it says, "not including public libraries," so libraries are still an eligible service.

**Mr Marchese:** And with regard to everything else that's mentioned in 4, all the other services, do you have any response to that?

**Mr Hardeman:** No. I think they're all quite self-explanatory.

**Mr Marchese:** Of course they are. A recorded vote, Madam Chair.

**The Chair:** Mr Sergio first, though, please.

**Mr Sergio:** Just to finish commenting on that, I think the entire clause in itself, let alone the amendment, deals with the heart of the bill in itself. Again, in one way, we are telling the local municipality, "Here, you have more power; you do whatever you want," and then we have the government saying: "Uh, uh. You cannot do some of the very most necessary things that municipalities have to provide to their local communities."

We are not dealing with the amount of development charges here; we are dealing with the responsibility, the freedom of how that local municipality is going to use those funds. If the roads are built for the new development, if the water provision is made, if the municipality decides that they need those moneys to provide other amenities important to that community, why shouldn't the local municipality use those funds?

This is the problem we see with this government and that many people see with this government. They are telling the local municipalities, "We want to give you more power," and then they say, "Well, no, you cannot use certain funds that you're going to come into to use for certain things." Well, either you give the local municipality the freedom to do that or you don't.

It's got nothing to do with increasing or bringing the prices of houses down. It is tying the hands of the local municipalities in terms of how they are going to use the funds that come into their pot. I mean, fine, build the roads, bring the world to build a new subdivision or whatever, but don't tell the local municipalities, "No, you cannot use certain specific funds in the way you want." I think that's where Mrs McCallion has a problem with this and every other mayor, including the AMO chair. I feel that the government doesn't recognize this.

We are not dealing with some municipalities that are charging too much or too little for development charges; we are dealing here with how the municipalities are going to use that particular freedom, to use that pot of money they get from development charges. I believe we should leave that flexibility to the local municipalities since we



recognize that they are the better ones to decide what's good for the local communities.

I find it quite disturbing that the government does not understand this particular situation. How can you tell the local municipality, "We want to give you more freedom, but we're going to dump on you everything else," and then you pick and choose as to what and where they can spend the money? You're going to hear a lot more from Mrs McCallion and others. I hope the government will come to understand this.

**Mr Marchese:** Just to make a point, for clarity, when Mr Hardeman responded to my comment by saying public libraries are eligible services, we understand that. The real point still is that communities can charge up to 70% of the growth-related capital costs, which includes libraries, and the residual 30% of the growth-related capital costs must be funded from other revenue sources. So there isn't fully recoverable money for libraries; 30% still has to be funded by municipalities.

I argue that's a serious problem. You may not think so, but the municipalities — I briefly had an opportunity before coming to the committee to glance at what deputants have said. They're going to have an incredible problem dealing with that. You will admit that's true and that they might have a problem. I'm not quite sure.

**Mr Hardeman:** For clarification, the amendment we were dealing with is the Liberal amendment that wishes to strike out subsection 2(4), which is the list of the ineligible services. I'm just clarifying that libraries do not fall on that list.

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I would also point out, as we get further in our deliberations to further amendments, we do have some proposals to change the 30% that libraries have to pay, to somewhat address the concerns that you've raised and that a number of other deputants to our committee have brought forward during the committee hearings.

**Mr Sergio:** Are you referring to the release of April 25, or are there still more amendments to come on that?

**Mr Hardeman:** I'm referring to the list of amendments that we will be dealing with today, hopefully. I'm not sure what you have there that you're referring to.

**Mr Sergio:** This one here deals with libraries and stuff like that. Do you have some new amendments further to this one here?

**Mr Hardeman:** No. I think the one you're referring to, if it's the same press release I have, is the 10% that would be required as a discounting for library services. Mr Marchese was talking about that being 30%, and I said there will be amendments coming forward to change that 30%.

**The Chair:** Any further discussion? Seeing none, I'll put the question. Shall the amendment carry? A recorded vote, please.

**Ayes**

Hoy, Marchese, Sergio.

**Nays**

Chudleigh, Danford, Fisher, Grimmett, Hardeman, Maves, Munro.

**The Chair:** The motion is lost.

Are there any further amendments to section 2? Shall section 2, as amended, carry? All those in favour? Opposed? Carried.

Section 3, no amendments. Shall section 3 carry? All those in favour? Opposed? Carried.

Section 4.

**Mr Hardeman:** I move that section 4 of the bill be struck out and the following substituted:

"Exemption for industrial development

"4(1) If a development includes the enlargement of the gross floor area of an existing industrial building, the amount of the development charge that is payable in respect to the enlargement is determined in accordance with this section.

"Enlargement 50% or less

"(2) If the gross floor area is enlarged by 50% or less, the amount of the development charge in respect of the enlargement is zero.

"Enlargement more than 50%

"(3) If the gross floor area is enlarged by more than 50% the amount of the development charge in respect of the enlargement is the amount of the development charge that would otherwise be payable multiplied by the fraction determined as follows:

"1. Determine the amount by which the enlargement exceeds 50% of the gross floor area before the enlargement.

"2. Divide the amount determined under paragraph 1 by the amount of the enlargement."

This is to clarify that if an enlargement exceeds the 50% gross floor area, the development charge would be based on that amount exceeding the 50% as opposed to the whole enlargement because it was more than 50%.

**Mr Marchese:** Just for the record, I want to say that I am in disagreement with this. I think the intent is not a bad one, that is, if it does create jobs, it's good for everybody and it's good for the economy generally speaking. That's why you want to do it. I understand the general purpose of it and I am not entirely in complete disagreement with it if it had that intended effect.

I am worried, however, in terms of what it does to communities, because normally a lot of communities relied or would rely on this type of support that comes from development charges. I am not sure the reduction of this will be equivalent to what might be produced and I am not sure what gains there would be for those communities that would lose that support that would come from development charges.

I am not as optimistic about what you hope will come out of this. I know you Tories like this stuff because it supports a lot of developers and their developments, so I appreciate where all of you are coming from, but I think a lot of communities will be perhaps unduly hurt by the absence of what normally would flow through to them.

**Mr Sergio:** Briefly on this one, it's again leaving that flexibility with the local municipality. When times are tough, there is no municipality that doesn't recognize that and make amends for that. I could cite a number of cases where local municipalities eliminated development charges, period. They didn't charge anything. They just

said: "Come and build. We beg you. We need the assessment, we need the jobs, so we won't charge you."

This is our position with this one: Sure, it would help create some jobs or help create some development or whatever, but what it does to the local municipality again ties their hands and says, "Go ahead and raise taxes on everybody else, because we won't charge this particular developer on the 50% or just on the portion above the 50% there."

I think that's an injustice to the local municipality as well and to the rest of the taxpayers, because now if you were to do that on a grand scale, then it would be penalizing other taxpayers in that particular municipality. So the municipality would be left with the choice of either instigating new user fees or raising taxes throughout the local municipality. I think that would be unfair.

I know what the intent of the government and the amendment is, but I think it would backfire and I think it would cause more instability within the local municipality. I think we should leave it up to the local municipality and say, "Hey, if you want to charge, it's up to you." But if times are tough, most municipalities recognize that.

We have seen, for example, in the Niagara-St Catharines area, where they practically eliminated all the development charges because times were tough and they wanted to attract development. So again, this will negate that flexibility.

**The Chair:** Any further discussion?

**Mr Marchese:** A recorded vote, Madam Chair.

**The Chair:** Shall the motion carry?

**Ayes**

Chudleigh, Danford, Fisher, Grimmett, Hardeman, Maves, Munro.

**Nays**

Hoy, Marchese, Sergio.

**The Chair:** Carried.

The next item in your package is not a motion, but for your information only.

Are there any further amendments to section 4, please? Shall section 4, as amended, carry? All those in favour? Opposed? Section 4 is carried as amended.

Section 5.

**Mr Hardeman:** I move that subsection 5(1) of the bill be amended by adding the following paragraph:

"2.1 The estimate under paragraph 2 may include an increase in need only if the council of the municipality has indicated that it intends to ensure that such an increase in need will be met. The determination as to whether a council has indicated such an intention may be government by the regulations."

This new paragraph requires municipalities to show that they intend to actually provide the increased level of service.

**The Chair:** Further discussion? Seeing none, I'll put the question. Shall the amendment carry? All those in favour? Opposed? The amendment is carried.

A Liberal motion.

**Mr Sergio:** I move that paragraph 3 of subsection 5(1) of the bill be amended by striking out the first two sentences and substituting:

"The estimate under paragraph 2 must not include an increase that would result in the level of service exceeding the maximum level of service under subsection (1.1). How the level of service is determined may be governed by the regulations."

**The Chair:** Any discussion?

**Mr Sergio:** I have nothing to add to that.

**The Chair:** I'll put the question. Shall the amendment carry? All those in favour? Opposed? The amendment is lost.

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A Liberal motion.

**Mr Sergio:** I move that paragraph 3 of subsection 5(1) of the bill be amended by striking out "unless the service is set out in subsection (6)" at the end.

**The Chair:** Discussion? Shall the motion carry? All those in favour? Opposed? The motion is lost.

A government motion.

**Mr Hardeman:** I move that paragraph 4 of subsection 5(1) of the bill be struck out and the following substituted:

"4. The increase in the need for service attributable to the anticipated development must be reduced by the part of that increase that can be met using the municipality's excess capacity, other than excess capacity that the council of the municipality has indicated an intention would be paid for by new development. How excess capacity is determined and how to determine whether a council has indicated an intention that excess capacity would be paid for by new development may be governed by the regulations."

This change clarifies the meaning of excess capacity. It is an extra capacity in the system that was not intended to be paid for by new development.

**Mr Marchese:** I have a question of Mr Hardeman or somebody else. "How excess capacity is determined and how to determine whether a council has indicated an intention that excess capacity would be paid for by new development may be governed by the regulations." It probably will be, I suspect. What kind of thinking is behind that sentence? Do we have a sense of what we're looking at?

**Mr Hardeman:** I think the minister would have the ability to have regulation to define how a municipality was to indicate its intention as to the use of the capacity. If the capacity was created to serve new development and paid for that way, they would be able to do that. If it was just a large trunk sewer and it had always been there because that was the size they put in the ground, even though it had excess capacity, they would not be allowed to charge that to new home buyers just for the sake that they were using it.

**Mr Marchese:** I understand.

**Mr Sergio:** Again this one deals with a very important planning matter or planning issue. Municipalities, on purpose — we call this good planning at the local level and I'm sure developers would agree with that — tend to provide excess capacity for future consideration. It's less costly. It is available when developers are ready to move



in or the municipality's ready to expand, and without delay. So this is good planning on behalf of the local municipality. To say, "No, you cannot do that," curtails the ability of the municipality to act and plan well for future expansion.

**Mr Hardeman:** Just for the record and clarification, if the municipality has planned for that future development and planned the future development to pay for that increased infrastructure, they will continue to be allowed to charge for that in development charges. This section would only delete the ability to charge for things that they had not planned to leave to the cost of new development but were part of their local infrastructure paid for through taxation in the past.

**Mr Sergio:** We'll let it go at that, but AMO doesn't think so. We don't see it the same way and neither does the Association of Municipalities of Ontario.

**The Chair:** Any further discussion? Seeing none, I'll put the question. Shall the amendment carry? All those in favour? Opposed? The amendment carries.

A Liberal motion.

**Mr Sergio:** I move that paragraph 4 of subsection 5(1) of the bill be struck out.

**The Chair:** Further discussion?

**Mr Sergio:** Same argument.

**The Chair:** Seeing no further discussion, I'll put the question. Shall the amendment carry? All those in favour? Opposed? The motion is lost.

**Mr Sergio:** I move that paragraph 6 of subsection 5(1) of the bill be amended by striking out "The capital costs must be reduced by the reductions set out in subsection (2)" in the third, fourth and fifth lines.

**The Chair:** Further discussion? Seeing none, I'll put the question. Shall the amendment carry? All those in favour? Opposed? The motion is lost.

**Mr Hardeman:** I move that paragraph 7 of subsection 5(1) of the bill be struck out and the following substituted:

"7. The capital costs must be reduced by 10%. This paragraph does not apply to services set out in subsection (6)."

This reduces the amount of the discount for services that were 30% down to 10%.

**Mr Marchese:** Does Mr Hardeman believe that municipalities are now happy with this?

**Mr Hardeman:** I'm not sure that it would be appropriate or that I could answer that question. My job is not to gauge the happiness or the unhappiness of individuals in this province. It is the government's direction, and this committee's direction, hopefully, to come up with policy that will suit the majority of the residents of the province. We do believe that this will do that.

**Mr Marchese:** So you think the communities in the 905 region and the rural areas were sufficiently angry and now sufficiently satisfied because you're responding to them?

**Mr Hardeman:** I wouldn't suggest that the legislation is being prepared to deal with people who are angry or not angry. It is prepared to provide the best possible governance for these people, and we believe this is going to do that.

**Mr Marchese:** Good policy. Good for you.

**The Chair:** Any further discussion? Seeing none, I'll put the question. Shall the amendment carry?

**Mr Marchese:** Recorded vote.

#### Ayes

Chudleigh, Danford, Fisher, Grimmer, Hardeman, Maves, Munro.

#### Nays

Hoy, Marchese, Sergio.

**The Chair:** The motion is carried.

The next amendment is a Liberal amendment.

**Mr Sergio:** I move that paragraph 7 of subsection 5(1) of the bill be struck out.

**The Chair:** Further discussion? I'll put the question. Shall the amendment carry? All those in favour? Opposed? The amendment is lost.

**Mr Hardeman:** I move that paragraph 8 of subsection 5(1) of the bill be amended by striking out "in particular cases" in the second and third lines and substituting "in any particular case."

This is a technical motion to ensure clarity and consistency in terms used in the bill.

**The Chair:** Further discussion?

**Mr Marchese:** Just a further explanation of that. Consistency, clarity — you obviously changed it from "in particular cases" to "in any particular case." There's something involved in that, right? What do you mean by "consistency and clarity" as it relates to other aspects of the bill?

**Mr Hardeman:** It was at the request of municipalities as they reviewed the legislation they put forward that it would require or it would be better served if we put in "in any particular case" as opposed to "in particular cases."

**Mr Marchese:** So municipalities requested that?

**Mr Hardeman:** Yes. If you wish, I could have the legal branch speak to that.

**Mr Marchese:** Sure, if they have another explanation or additional.

**Mr Hardeman:** Not another; a clearer explanation of the same answer.

**Mr Marchese:** For sure.

**Ms Davies:** The theory of the bill is that in the bylaw, you must be able to look at a development charges bylaw and know whether a development charge is payable in any particular situation on any particular development, and it was thought that it would be clearer to say in any particular case that reflects the application of a bylaw.

**Mr Marchese:** Same clarity. It's wonderful, really.

**The Chair:** Further discussion? I put the question. Shall the amendment carry? All those in favour? Opposed? The motion is carried.

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**Mr Hardeman:** I move that paragraph 9 of subsection 5(1) of the bill be amended by striking out the last sentence and substituting "The rules may also provide for the indexing of development charges based on the prescribed index."

Again, this is a technical motion to enable the regulations to provide for a single index as opposed to multiple indexes.

**Mr Marchese:** For clarity that means what again?

**Mr Hardeman:** It's just to take the plural and take it to singular and allow the singular.

**Mr Marchese:** I'm glad it's clear to you, Mr Hardeman. Could I have another explanation so as to understand it clearly?

**Ms Davies:** Yes. The existing act, as well as the existing bill, provides for multiple indexes, and the sectors, both municipal and development, have found that one of the three indexes is particularly accurate and appropriate, which is a construction index. So they have said that they would like a single index to be prescribed, which is the most accurate index.

**Mr Marchese:** Thank you.

**The Chair:** Further discussion? Seeing none, shall the amendment carry? All those in favour? Opposed? The motion is carried.

**Mr Sergio:** I move that paragraph 9 of subsection 5(1) of the bill be amended by striking out "may also" in the fourth line and substituting "shall."

**The Chair:** Further discussion? Seeing none, I'll put the motion. Shall the amendment carry? All those in favour? Opposed? The motion is lost.

**Mr Sergio:** I move that section 5 of the bill be amended by adding the following subsection:

"Maximum level of service

"(1.1) The maximum level of service, for the purposes of paragraph 3 of subsection (1), is the higher of the following levels:

"1. The average level of that service provided in the municipality over the 10-year period immediately preceding the preparation of the background study required under section 10. How the average level of service is determined may be governed by the regulations.

"2. The level of that service provided in the municipality when the background study required under section 10 is prepared.

"3. The level of service required by law."

I think that's self-explanatory, Madam Chair. I will add nothing else to it.

**The Chair:** Further discussion? Seeing none, I put the question. Shall the amendment carry? All those in favour? Opposed? The motion is lost.

**Mr Hardeman:** I move that subsection 5(2) of the bill be struck out and the following substituted:

"Capital costs, deductions

"(2) The capital costs, determined under paragraph 6 of subsection (1), must be reduced, in accordance with the regulations, to adjust for capital grants, subsidies and other contributions made to a municipality or that the council of the municipality anticipates will be made in respect of the capital costs."

This motion is to make sure that the grants and subsidies that would be allocated would be allocated appropriately between the existing growth and the new growth, so it would not all be attributed to one or the other.

**The Chair:** Further discussion? Seeing none, I put the question. Shall the amendment carry? All those in favour? Opposed? The motion is carried.

**Mr Sergio:** I move that subsection 5(2) of the bill be struck out.

**The Chair:** Further discussion? Shall the amendment carry? All those in favour? Opposed? The motion is lost.

**Mr Hardeman:** I move that the part of subsection 5(3) of the bill preceding paragraph 1 be struck out and the following substituted:

"(3) The following are capital costs for the purposes of paragraph 6 of subsection (1) if they are incurred or proposed to be incurred by a municipality or a local board directly or by others on behalf of, and as authorized by, a municipality or local board."

This is a technical motion to ensure that costs incurred by others on behalf of the municipality are included as capital costs.

**The Chair:** Further discussion? I put the question. Shall the amendment carry? All those in favour? Opposed? The motion is carried.

**Mr Hardeman:** I move that subparagraph i of paragraph 4 of subsection 5(3) of the bill be struck out and the following substituted:

"i. rolling stock with an estimated useful life of seven years or more,

"i.1 furniture and equipment, other than computer equipment, and"

As an explanation, capital costs will no longer include rolling stock with a short lifespan of less than seven years, or computer equipment.

**The Chair:** Further discussion? Seeing none, I put the question. Shall the amendment carry? All those in favour? Opposed? The amendment carries.

**Mr Sergio:** I move that subsection 5(3) of the bill be amended by adding the following paragraph:

"6.1 Costs of any study to determine the amount, type or location of future development and the services that will be needed as a result."

**The Chair:** Further discussion? Seeing none, I put the question. Shall the amendment carry? All those in favour? Opposed? The motion is lost.

**Mr Hardeman:** I move that subsection 5(5) of the bill be struck out.

**The Chair:** Further discussion? I put the question. Shall the amendment carry? All those in favour? Opposed? The motion carries.

**Mr Hardeman:** I moved that the part of subsection 5(6) of the bill preceding paragraph 1 be struck out and the following substituted:

"(6) The services referred to in paragraph 7 of subsection (1) for which there is no percentage reduction, are the following."

**The Chair:** Further discussion? Shall the motion carry? All those in favour? Opposed? Carried.

**Mr Hardeman:** I move that paragraphs 5 and 7 of subsection 5(6) of the bill be struck out.

**The Chair:** Further discussion? I put the question. Shall the amendment carry? All those in favour? Opposed? The motion is carried.

**Mr Sergio:** I move that subsection 5(6) of the bill be struck out.

**The Chair:** Further discussion?

**Mr Bill Grimmett (Muskoka-Georgian Bay):** Did we not just do that amendment?



**Mr Sergio:** No, you did the government's. This is the Liberal amendment.

**The Chair:** Right. This is an amendment to the entire section. Shall I put the question? Shall the amendment carry? All those in favour? Opposed? The motion is lost.

**Mr Hardeman:** I move that subsection 5(7) of the bill be amended by striking out "in a particular case" in the third line and substituting "in any particular case."

Again this is a technical amendment to deal with the consistency of the terms used in the bill.

**The Chair:** Shall the amendment carry? All those in favour? Opposed? Carried.

Any further amendments to section 5? I put the question. Shall section 5, as amended, carry? All those in favour? Opposed? The section is carried.

Section 6.

**Mr Hardeman:** I move that paragraph 1 of section 6 of the bill be amended by striking out "in a particular case" in the third and fourth lines and substituting "in any particular case."

Again it's the same amendment as we've had previously for clarity and consistency in the bill.

**The Chair:** Shall the amendment carry? All those in favour? Opposed? The motion is carried.

Any further amendments to section 6? Shall section 6, as amended, carry? All those in favour? Opposed? Section 6, as amended, shall carry.

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Section 7.

**Mr Hardeman:** I move that subsection 7(1) of the bill be struck out and the following substituted:

"Categories of services

"(1) A development charge bylaw may provide for services to be grouped into a category of services. However, services for which there is a 10% reduction under paragraph 7 of subsection 5(1) may not be grouped with services for which there is no such reduction."

**Mr Marchese:** Can I have an explanation on that?

**Mr Hardeman:** This change is to implement the removal of the discount for the old 10% services and to reduce the 30% discount on all eligible services to 10%.

**Mr Marchese:** It "may not be grouped with services for which there is no such reduction." Is that the answer to this point? Whatever Mr Hardeman said relates to that?

**Ms Davies:** Yes, Mr Marchese.

**Mr Sergio:** Can I ask a question of staff, please? What's the intent of the existing legislation where it says now subsection 5(1) is being amended, where it says "may not be grouped" while the existing legislation is "to be grouped into a category of service"? Why such a departure from that?

**Ms Davies:** The language is different because in Bill 98 to which you refer there were two types of percentage categories, so the language was, "A development charge bylaw may provide for services, each of which is subject to the same percentage...to be grouped into a category of services," meaning you have to group the 10s together and the 30s together. We've now made a change from 30 and 10 to 10 and zero, so we don't have two percentage reductions. That is the grammatical change to reflect that.

**Mr Sergio:** Since we don't have that, would you say the change is useless? It doesn't do anything?

**Ms Davies:** I think it's still an important change because what it means that services may be grouped where they are 10% and services may be grouped where they are 0%. It's the same intent as the original subsection, simply reflecting the changes in the percentage reductions.

**The Chair:** Any further discussion? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 7, as amended, carry? All those in favour? Opposed? Section 7, as amended, shall carry.

Is there any discussion or amendments on sections 8 through to 11, please? Seeing none, shall sections 8 through 11 carry? All those in favour? Opposed? Sections 8 through 11 shall carry.

Section 12.

**Mr Hardeman:** I move that clause 12(1)(b) of the bill be struck out and the following substituted:

"(b) give at least 20 days' notice of the meeting or meetings in accordance with the regulations; and"

This is a technical motion to clarify the scope of the regulation-making authority in the bill and to ensure that the types of notice anticipated are provided for; strictly to set the time lines for the notices required for certain activities.

**Mr Marchese:** I'm not quite sure why you're making this change. It says in the original amendment there, "give at least 20 days' notice of the meeting or meetings in the manner." I'm just going to go through it for a second.

**Mr Hardeman:** Mr Marchese, we're just removing "to the persons and organizations prescribed," so the notice would not be prescribed as to where the notice has to go through this section, only the time.

**Mr Marchese:** I'm not sure whether I prefer it the way it was or the way you're about to be changing it. The way it was, it says "in the manner and to the persons and organizations prescribed." I had a problem with the word "prescribed," because I'm not sure whether you can prescribe people, which is rather odd, almost dumb too, because I don't know how you do that. But then you change it with something which is, for me, not necessarily obscure, but to leave it to regulation I'm not quite sure what you intend to do with that.

**Mr Hardeman:** I'm just informed that the draft regulations actually say that the notice could be by newspaper, so that would not then include it to be to persons. So we need to remove "the persons" —

**Mr Marchese:** I don't mind that. Because it's not that complicated, why could we not have said that in the amendment as opposed to leaving it to regulation? There aren't too many other ways of doing some of these things, or do you think there are?

**Mr Hardeman:** With the amendment the legislation will now be giving it notice in different manners as it's prescribed by regulation. The only thing that will be required by legislation is that we must give 20 days' notice of the meetings.

**Mr Marchese:** I understand that. I'm worried about what regulations might or might not do. We've always been worried, you in opposition and we in opposition, because we're not quite sure what regulations are likely to do. That's why we worry about that language. If we

have a number of ways in which this can be done in terms of public meetings — the way we do it in subcommittee is to decide if we go through newspapers or we attach notice on the parliamentary channel and so on. There aren't too many ways of doing this. Why wouldn't we say that in this language as opposed to leaving it to regulation?

**Mr Hardeman:** I'm just informed that in fact the giving of notice and how that can be done is in other legislation, including the Planning Act. Again this section is only to make sure that you must give 20 days' notice of such meetings. As it is presently in the legislation before this amendment, it is more prescriptive as to how it must be done.

**Mr Marchese:** I understand that. It doesn't answer my question, though.

**Mr Hardeman:** We are maintaining the fact that it must be done, but giving the local direction as to how they could do it.

**Mr Marchese:** That's okay. That wasn't what I asked, but we should move on, I think.

**The Chair:** In that case, I put the question. Shall the amendment carry? All those in favour? Opposed? The amendment carries.

Shall section 12 then, as amended, carry? All those in favour? Opposed? Carried.

Moving to section 13.

**Mr Hardeman:** I move that subsection 13(2) of the bill be struck out and the following substituted:

"Requirements of notice

"(2) Notices required under this section must meet the requirements prescribed in the regulations and shall be given in accordance with the regulations."

Again this is a technical motion to clarify the scope of the regulation-making authority in the bill and to ensure that the types of notice anticipated are provided for.

**Mr Marchese:** So this one means that whatever you describe in regulation, which we don't know about, whatever is described in regulations, notices must fit into that? Correct, more or less?

**Mr Hardeman:** Yes.

**Mr Marchese:** My ongoing worry is what regulations might do, and that's what you weren't answering, what this might say.

**Mr Hardeman:** I can't put your mind at rest totally on what future regulations may or may not say. For the purpose of this act, we have put forward draft regulations that deal with that as we see this should be done, but we cannot guarantee that forever and ever no one would change those regulations as to the requirements.

1650

**Mr Sergio:** You have put forth draft regulations, so they are in draft form. We have no idea what those regulations entail. I would like to know if there is anything within the existing regulations or the Planning Act which gives the local municipality, planning boards and planning departments, especially with the changes now, the megacity and so forth, the flexibility that yes, there's 20 days' notice. Are those 20 days clear? Can they choose to have their own planning department staff send out the notices? Small municipalities may not have other means of advertising or it may be expensive. Do

they have the flexibility that the local municipality may direct their own planning department to notify?

Also, I believe there is some legislation or within the present Planning Act that the local municipality must notify within a particular radius. So if it is 20 days, is it within 400 feet, 400 metres, half a mile of the particular application or now are we eliminating that particular section?

Also, 20 days may seem to be a lot to a developer who wants to move expeditiously. With what your government is creating now, these local boards or commissions and ratepayers' group and whatever, you name it, sometimes 20 days is not a heck of a lot when you're now going to have another group of elected politicians who will have to meet with the local commission. Maybe that local commission will have to meet with another ratepayers' group and 20 days to do all of that is not a heck of a lot.

I understand the direction of the government and I won't dwell too much on it, but I would like to have some clarification from staff if there is any particular place where the local municipalities still have the flexibility and the power to send out notices themselves and if they are combined within a particular radius.

**Mr Hardeman:** I think the regulations are quite clear: The notices for the application of the development charge bylaw must be sent out to the area that it covers. If the bylaw is for a certain geographic area, that's the area that must be notified and in the draft regulation, they must be notified by either direct mailing or through newspaper advertising.

Incidentally, in the draft regulations, there was clear accounting for what constitutes 20 days, whether it's 20 working days or 20 calendar days. I think they're clarified. The amendments in the legislation are based on the need to make sure that the minimum requirements, even beyond regulations, are in the legislation. That would not be changed. All would always be entitled to that type of notification.

**Mr Sergio:** I don't want to dwell on it, but just for clarification, unless it's in some other parts of the legislation or regulation here, in 13 there is nothing that says to whom and where. It doesn't say at all in here. There is nothing at all.

**Mr Hardeman:** I think the prescription of who it must go to is in the regulations so that can be identified.

**Mr Sergio:** In the draft regulation, that's the way it's going to be.

**Mr Hardeman:** Yes, it would be in the drafted regulations.

**Mr Sergio:** So actually, you're tell us, you're telling the public: "Trust us. We're going to have something in there for you." You're going to tell those local people, "We're going to give you the voice that you want, and you can rest assured that the local municipality will be obliged, forced, to send out notices within a half-mile radius, and we are approving this legislation, and there is absolutely nothing in this?"

**Mr Hardeman:** I think I would point out to your earlier comment that one has to leave the flexibility for our local municipalities to give an appropriate notification.

**Mr Sergio:** But it's not in here. That's my point.



**Mr Hardeman:** The degree of openness of that notification would be in regulations. Without the regulation as it relates to the legislation, it would be totally open. I would agree with you that it would be inappropriate to say there are no stipulations how notifications must be given and that's why the draft regulations had been introduced. So it will direct that notification process.

**Mr Sergio:** I'll be watching for that.

**The Chair:** I've put the question. Seeing no further discussion, shall the amendment carry? All those in favour? Opposed? The amendment carries.

Seeing no further amendment, shall section 13, as amended, carry? All those in favour? Opposed? Carried.

Are there any further amendments or discussion to sections 14, 15, 16 or 17?

Seeing none, shall sections 14 through 17 carry? All those in favour? Opposed? Sections 14 through 17 carry. Section 18.

**Mr Hardeman:** I move that subsection 18(3) of the bill be amended by striking out "at the prescribed rate" in the second line and substituting "at a rate not less than the prescribed minimum interest rate."

Again, this is a motion to clarify the scope of the regulation-making authority of allowing minimum interest rates to be prescribed, but the municipalities could change the rate provided they did not go below the minimum rate.

**The Chair:** Discussion? Shall the amendment carry? All those in favour? Opposed? Carried.

Any further amendments or comments on section 18? Shall section 18, as amended, carry? All those in favour? Opposed? Section 18, as amended, shall carry.

Any further amendments or comments on sections 19 or 20?

Seeing none, shall sections 19 and 20 carry? All those in favour? Opposed? Carried.

Section 21: This is a note of information only. Any further discussion or amendments in section 21? Shall section 21 carry? All those in favour? Opposed? Carried. Section 22.

**Mr Sergio:** I move that subsection 22(1) of the bill be struck out.

**The Chair:** Further discussion?

**Mr Marchese:** That subsection 22(1) be struck out?

**Mr Sergio:** Yes.

**Mr Marchese:** Subsection 22(1) says, "A complainant may appeal the decision of the council of the municipality to the Ontario Municipal Board."

**Mr Sergio:** Yes.

**Mr Marchese:** You want that struck out.

**Mr Sergio:** The only time a complainant should be brought to the OMB is where a council fails to decide within 90 days of filing a complaint. That is the —

**Mr Marchese:** Yes, but this says a complainant may appeal the decision of the council, which is a good thing.

**Mr Sergio:** Yes.

**Mr Marchese:** But you want that struck out.

**Mr Hardeman:** Pending further clarification, I will be voting against the resolution because I think we should allow these to go to the board for an appeal.

**Mr Marchese:** That's very good, Mr Hardeman.

**Mr Hardeman:** There are times when that's required.

**Mr Sergio:** Hold on a second.

**Mr Hardeman:** It's the time limit you're concerned with?

**Mr Sergio:** No. I understand what you're saying and I understand what the amendment here is. I think the only time that a complainant should go to the OMB is where a council fails to decide within 90 days. Yes, of course, they should have the right to the OMB, but if a council doesn't want to deal with an issue and they want to procrastinate for whatever, let's say, political reasons and within 90 days the council has not made a decision, then I think they should have the right to go to the OMB within the 90 days.

**Mr Marchese:** You might want to withdraw it, Mr Sergio.

**Mr Sergio:** I'll let it go. You can vote against it.

**The Chair:** Then I shall put the question. Shall the amendment carry? All those in favour? Opposed? The amendment is carried.

**Mr Sergio:** I move that subsection 22(2) of the bill be amended by striking out "also" in the first line and by striking out "60 days" in the fourth line and substituting "90 days."

See, now you get the real meaning. We want to give you a better chance here.

1700

**Mr Marchese:** The previous argument has been made to this motion, is that it?

**Mr Sergio:** No further explanations.

**The Chair:** Shall the amendment carry? All those in favour? All those opposed? The motion is lost.

Any further amendments or comments on section 22? Shall section 22 carry? All those in favour? Opposed? Section 22 is carried.

Section 23.

**Mr Sergio:** I move that subsection 23(1) of the bill be struck out.

**The Chair:** Further discussion?

**Mr Marchese:** Is there an explanation? Is this self-explanatory?

**Mr Hardeman:** Madam Chair, I can use the same argument as last time. I will be voting against the amendment, partly because I don't understand why the process outlined in the appeal process would be inappropriate.

**Mr Marchese:** Is there an issue why you want to move that? You still want to move it?

**Mr Sergio:** Yes.

**The Chair:** Do you wish to respond, Mr Sergio?

**Mr Sergio:** No, I move it. No withdrawal.

**The Chair:** All right, then I'll put the question. Shall the amendment carry? All those in favour? Opposed? The motion is lost.

Shall section 23 carry? All those in favour? Opposed? Carried.

Are there any amendments or comments on section 24? Shall section 24 carry? All those in favour? Opposed? Carried.

Section 25.

**Mr Hardeman:** I move that subsection 25(2) of the bill be amended by striking out "at the prescribed rate" in the second line and substituting "at a rate not less than the prescribed minimum interest rate."

Again, that's a clarification to make sure that only the minimum interest rate is defined and beyond that it is a municipal decision.

**The Chair:** Further discussion? Shall the amendment carry? All those in favour? Opposed? The amendment carries.

Further comments or amendments on section 25? Shall section 25, as amended, carry? All those in favour? Opposed? It's carried.

Section 26.

**Mr Hardeman:** I move that subsection 26(2) of the bill be struck out and the following substituted:

"Special case, approval of plan of subdivision

"(2) A municipality may, in a development charge bylaw, provide that a development charge for services set out in paragraphs 1, 2, 3, 4, or 6 of subsection 5(6) for development that requires approval of a plan of subdivision under section 51 of the Planning Act or a consent under section 53 of the Planning Act and for which a subdivision agreement or consent agreement is entered into, be payable immediately upon the parties entering into the agreement."

This change will mean that the development charges for transit, fire and police cannot be required at the subdivision stage; only charges for water, sewer, roads and hydro services can be required at the time of subdivision approval.

**The Chair:** Any discussion or comment? Shall the amendment carry? All those in favour? Opposed? The amendment carries.

Any further comment or amendments to section 26? Shall section 26, as amended, carry? All those in favour? Opposed? It carries.

Section 27.

**Mr Hardeman:** I move that the part of subsection 27(2) of the bill preceding clause (a) be struck out and the following substituted:

"(2) The total amount of development charge payable under an agreement under this section is the amount of the development charge that would be determined under the bylaw on the day specified in the agreement or, if no such day is specified, at the earlier of."

This is a technical change to clarify that a municipality may only agree to calculating charges at an earlier or later date.

**The Chair:** I put the question: Shall the amendment carry? All those in favour? Opposed? It's carried.

**Mr Sergio:** I move that section 27 of the bill be amended by adding the following subsection:

"Security for late payments

"(4) An agreement under this section may provide for the giving of security to secure the payment of the parts of development charges that are payable after they would otherwise be payable together with any interest that may be payable."

That, in our view, would add the authority of the municipality to obtain security forms for no payment or late payment. That's all.

**The Chair:** Further discussion?

**Mr Marchese:** Is there an explanation from the government member? Agreement or disagreement?

**Mr Hardeman:** I'm not sure that I can give you the total direction from the committee as I've obviously just

received the amendment as we speak. It would appear to me that the direction of the amendment is to put the municipalities into the brokering business, that they can accept other securities rather than payments. I'm sure this would not be an appropriate way of dealing with the development charges.

**Mr Sergio:** Can we have the views of staff, Madam Chair, please, how they view this amendment as it's written.

**Ms Davies:** The context is early and late payment agreements, and they may provide for appropriate provisions, and this doesn't add anything to the early or late payment provisions that's not already available. Certainly Mr Hardeman's concerns may be an inappropriate application of that in any specific early or late payment agreement.

**Mr Sergio:** My problem with that is that the parliamentary assistant says municipalities shouldn't take anything other than cash. Municipalities don't take cash; they take credit, they take bonds, and they resort to this type of action, if you will, only when they cannot collect and payments are late. I think we should give the local municipality that freedom, that flexibility. If they can't collect, they've got to do something.

**Mr Hardeman:** But in the present act, as it's being proposed, it allows for the agreement of when charges can or should be paid.

**Mr Sergio:** It can ensure it, but we are talking about late payments.

**Mr Hardeman:** Giving up securities, if it's in the appropriate form of securities that municipalities are authorized to deal in, that could be dealt with in the early and late payment as the legislation presently exists.

If we're looking at adding to that, we get to the other part, that they would then be dealing in areas legislation does not presently allow them to be involved in, such as buying into the subdivision as opposed to having a subdivision agreement. All of a sudden they could turn in and become the developer as opposed to being the governance over that development. I think this resolution would be inappropriate.

**Mr Marchese:** Just so I understand, there is already enabling language somewhere else that permits municipalities to do whatever with respect to early or late payments. It's somewhere in the act that it says this or does this, thereby making this unnecessary?

**Ms Davies:** Just a slight clarification: There's general ability to enter into agreements providing for early and late payment. There are many appropriate terms and conditions that, under normal contract, could be dealt with, and there's permissive legislation elsewhere about the scope of municipalities.

**The Chair:** Any further discussion?

**Mr Sergio:** A recorded vote.

**The Chair:** Shall the amendment carry?

**Ayes**

Sergio.

**Nays**

Chudleigh, Danford, Fisher, Grimmer, Hardeman, Marchese, Maves, Munro.



**The Chair:** The motion is lost.

Any further amendments or comments on section 27? Shall section 27, as amended, carry? All those in favour? Opposed? Carried.

Any further amendments or comments on sections 28, 29, 30 or 31? Seeing none, I put the question: Shall sections 28 to 31 carry? All those in favour? Opposed? Carried.

Section 32.

**Mr Sergio:** I move that subsection 32(1) of the bill be amended by striking out "shall be collected in the same manner as taxes" at the end and substituting "shall be deemed to be taxes."

1710

**The Chair:** Further discussion?

**Mr Sergio:** If the local municipality can collect development charges, just to treat them as a tax; in many cases in municipalities they put an encumbrance on their property or whatever and it would become part of the taxes to be collected.

**Mr Hardeman:** The government has consistently been changing legislation, as has been proposed, to "shall be collected in the same manner as taxes" rather than being "deemed" as taxes. I think it's inappropriate to pass legislation that deems something to be something that it isn't. Though you may want to be able to collect them in a similar manner as taxes, I think it's inappropriate to legislate to say that they shall be taxes; they are not, and so they shouldn't be. I think the impact of doing it would be similar, if you can collect them as taxes, and I don't believe it's appropriate to also deem them taxes.

**Mr Sergio:** Just a question of staff, Madam Chair. Doesn't the Municipal Act refer to that as taxes? When municipalities are faced with a situation like this, the Municipal Act addresses that as taxes.

**Mr Hardeman:** My understanding — and we're not debating the Municipal Act today — is that other acts allow municipalities to collect other charges in a similar manner as taxes, but that does not make them or deem them to be taxes.

**Mr Sergio:** Okay, that's fine.

**Mr Hardeman:** Ontario Hydro has the ability to ask the municipality to collect their arrears on the tax roll, but that does not make them taxes or deem them to be taxes.

**Mr Marchese:** Here we're dealing with, if a development charge or any part of it remains unpaid, how you collect it. The point is that you collect it in the same manner as taxes; you don't collect it in the same manner as "shall be deemed to be taxes." It doesn't fit. It doesn't make any sense.

**Mr Sergio:** I believe we have different views, but that's all right. That's part of the process.

**Mr Hardeman:** To further the concern the government would have with supporting this motion would be the fact that if they were deemed to be taxes, they would be attached to the new house. If they are collected in a like manner as taxes, they would be collected from the individual who owed them, which could very well be the developer, not the new homeowner. I think it's important that they be collectable as taxes but not deemed to be taxes.

**Mr Sergio:** You don't want to, but you're moving into the Municipal Act, but that's okay.

**The Chair:** Seeing no further discussion, I put the question: Shall the amendment carry? All those in favour? Opposed? The motion is lost.

Any further amendments or comments to section 32? Shall the section carry? All those in favour? Opposed? It carries.

Any comments or amendments to section 33 or 34? Seeing none, shall section 33 and section 34 carry? All those in favour? Opposed? Carried.

Section 35.

**Mr Hardeman:** I move that section 35 of the bill be amended by striking out "paragraphs 2 to 6" in the last two lines and substituting "paragraphs 2 to 7."

This is a technical motion to ensure proper cross-referencing in the bill.

**The Chair:** Further comment? Shall the amendment carry? All those in favour? Opposed? Carried.

Any further amendments or comment on section 35? Shall section 35, as amended, carry? All those in favour? Opposed? Carried.

Section 36. I see no amendments; these are notes.

**Mr Hardeman:** I don't know about the other members of the government side, but I will be voting against this section as it becomes redundant because of the changing in the percentages.

**Mr Marchese:** Why would they do that?

**The Chair:** Any further comments?

**Mr Marchese:** I just want to agree with Mr Hardeman. Clearly, they've been listening, presumably as they did during the tour outside of Toronto. There must have been complaining about what this section would have done in terms of their ability to use reserve funds. Presumably, Mr Hardeman and the others who were there must have come to this enlightened conclusion that this would have been a mistake had they done this. So they've been listening. Mr Hardeman, is that more or less what happened?

**Mr Hardeman:** I have come up with a good reason why I am going to vote against this section, not to dictate or to suggest that I would dictate what the other members of the government side would do.

**Mr Marchese:** Let's ask them.

**Mr Hardeman:** I'm sure they too have heard what has been said. They will vote their conscience.

**Mr Marchese:** I want to hear from them.

**Mr Hardeman:** We'll see that when we vote.

**Mr Marchese:** Do we have any folks there who want to speak to this?

**The Chair:** I'll put the question. Shall section 36 carry? All those in favour? Opposed? The section is lost. Section 37; Mr Hardeman.

**Mr Sergio:** With all due respect, we have an amendment here. For some reason we think the same way. I don't know why they are voting with us on this one here.

**Mr Hardeman:** I move that section 37 of the bill be amended by striking out "at the prescribed rate" at the end and substituting "at a rate not less than the prescribed minimum interest rate."

Again, this clarifies that the interest rate would be at least minimum as opposed to being dictated to be the minimum.

**The Chair:** Further discussion? Shall the amendment carry? All those in favour? Opposed? The amendment carries.

Any further comments or amendments to section 37? Shall section 37, as amended, carry? All those in favour? Opposed? The section carries.

Section 38.

**Mr Marchese:** I move that section 38 of the bill be struck out and the following substituted:

"Municipal Act, exclusions

"38. The following provisions of the Municipal Act do not apply to development charges collected by a municipality:

"1. Subsection 163(2.1), paragraph 2 of subsection 163(2.2) and subsections 163(3), (4) and (5).

"2. Clause 167(2)(b) and subsections 167(4) and (5)."

This change will bring Bill 98 into conformity with the investment provisions of Bill 86.

**Mr Marchese:** What is that?

**Mr Hardeman:** Bill 86 is the Municipal Elections Act and the Municipal Act.

**Mr Marchese:** I remember the bill. The investment provisions are, again? Does anybody remember?

**Mr Hardeman:** I'll have to ask the staff to answer that one. It's how money can be invested or needs to be invested. In this bill, it will have its own authority as to how the money is to be invested; in the other one, it's directed how they can do it.

**Ms Davies:** Just to clarify, the point is that there are certain provisions dealing with the use of money and reserves in the Municipal Act that were amended by Bill 86.

**Mr Marchese:** Yes, I remember.

**Ms Davies:** This provision provides that those do not apply, because the reserve provisions are self-contained in the Development Charges Act. We're simply changing the cross-referencing to the reserve provisions in the Municipal Act, which do not apply.

**The Chair:** Shall the amendment carry? All those in favour? Opposed? The amendment carries.

Any further comments or amendments to section 38? Shall section 38, as amended, carry? All those in favour? Opposed? Section 38 carries.

Section 39.

**Mr Hardeman:** I move that subsections 39(1) and (2) of the bill be struck out and the following substituted:

"When credits given

"(1) If a municipality agrees to allow a person to perform work that relates to a service to which a development charge bylaw relates, the municipality shall give the person a credit towards the development charge in accordance with the agreement."

This motion clarifies the requirements that municipalities must give credits for work provided in lieu. This is a technical change.

1720

**Mr Marchese:** I don't see how that clarifies technically. It says, "the municipality shall give the person a credit." Isn't that already clear probably somewhere else?

**Mr Hardeman:** The request from the consultation was that they wanted it in this section.

**Mr Marchese:** By "they," you mean the developers?

**Mr Hardeman:** Yes. It is a clarification. It already existed, but it was felt appropriate that it should be written in this section so it applied to this section.

**Mr Marchese:** I'm glad we're listening to the developers, Mr Hardeman, it's important.

**Mr Hardeman:** I'd just like to point out for all the committee members that we listened to everyone who made a presentation.

**Mr Marchese:** Everyone? That's good.

**The Chair:** Shall the amendment carry? All those in favour? Opposed? The amendment carries.

Any further comments or amendments to section 39? Shall section 39, as amended, carry? All those in favour? Opposed? Section 39, as amended, carries.

Sections 40 and 41: Are there any comments or amendments? Shall sections 40 and 41 carry? All those in favour? Opposed? Carried.

Section 42.

**Mr Hardeman:** I move that subsection 42(4), (5) and (6) of the bill be struck out.

**Mr Marchese:** What is the effect of that?

**Mr Hardeman:** This change is to remove the requirement for a municipal contribution where a credit is used. It follows from the removal of the municipal copayments.

**Mr Marchese:** What does that mean?

**Mr Hardeman:** The act presently requires the contribution of the municipality to development charges. Since it has been changed to remove the original 10% and change the 30% to 10%, the 10% can be just a reduced charge as opposed to a municipal contribution. This is required to accommodate that.

**The Chair:** Further discussion? Shall the amendment carry? All those in favour? Opposed? It carries.

Any further comments or amendments for section 42? Shall section 42, as amended, carry? All those in favour? Opposed? Section 42 carries.

Any comments or amendments to section 43? Shall section 43 carry? All those in favour? Opposed? Section 43 carries.

Section 44.

**Mr Sergio:** I move that subsection 44(2) of the bill be struck out.

Just briefly, because of the number of regulations that provide direction on how the act is to be implemented, we believe that an annual reporting would be sufficient instead of reporting on a line-by-line basis.

**Mr Hardeman:** The government would see it as quite appropriate to include the requirement that they prepare and have open for public scrutiny how the funds are being collected, how they're being distributed and how they're being looked after in reserves. We think it's appropriate that this section remain in the bill.

**Mr Sergio:** I don't want to imply that we don't require that it be open, that they don't report. It's only saying that once a year would be enough.

**The Chair:** I'll put the question. Shall the amendment carry? All those in favour? Opposed? The motion is lost.

Any further amendments or comments on section 44? Shall section 44 carry? All those in favour? Opposed? Section 44 carries.

Section 45.



**Mr Hardeman:** I move that the part of subsection 45(1) of the bill preceding clause (b) be struck out and the following substituted:

"Front-ending agreement

"45(1) A municipality in which a development charge bylaw is in force may enter into an agreement, called a front-ending agreement, that,

"(a) applies with respect to work, done before or after the agreement is entered into,

"(i) that relates to the provision of services for which there will be an increased need as a result of development, and

"(ii) that will benefit an area of the municipality, defined in the agreement, to which the development charge bylaw applies."

**Mr Marchese:** What is the effect of your change with respect to what you previously had there?

**Mr Hardeman:** The front-end provisions are to be amended in light of the other changes proposed in the bill. This change will require a development charge bylaw to be enforced on the relevant lands. Also the amendment allows the charge for work that was done prior to and subsequent to the agreement, although the work that is being charged for must be in a development charge bylaw. So they cannot come up with special deals that would put more charges towards the development as they saw fit.

**The Chair:** Further comment? I'll put the question. Shall the amendment carry? All those in favour? All those opposed? The amendment carries.

**Mr Hardeman:** I move that subsection 45(2) of the bill be struck out and the following substituted:

"Restrictions on services covered

"(2) The services to which the work relates must be services to which the development charge bylaw relates and that are set out in paragraph 1, 2, 3, 4 or 6 of subsection 5(6)."

I would just note that only water, sewer, roads and hydro are services which may be front-ended, and these services must be in the bylaw if they are to be front-ended.

**Mr Marchese:** So you're adding to this?

**Mr Hardeman:** It limits the scope of a development front-end agreement to apply only to water, sewer, roads and hydro as they relate to servicing a development, the immediate services required for that development to be put in place. In fact, some of those services may be required beyond the site, and they can front-end that type of agreement; the others must be paid in development charges directly.

**The Chair:** Any further discussion? Shall the amendment carry? All those in favour? Opposed? The amendment carries.

**Mr Hardeman:** I move that section 45 of the bill be amended by adding the following subsection:

"Exemption for industrial development

"(3.1) Section 4 applies, with necessary modifications, to amounts a person who is not a party to a front-ending agreement must pay under the agreement."

This is a note in explanation: A front-ending agreement could not be used to impose charges on industrial expansions of less than 50%.

**The Chair:** Further discussion? Shall the amendment carry? All those in favour? Opposed? The amendment carries.

**Mr Sergio:** I move that subsection 45(6) of the bill be amended by adding the following paragraph:

"3. The municipality's costs of dealing with an objection to the front-ending agreement including the municipality's legal costs relating to any hearing held by the Ontario Municipal Board."

It says that the municipality's costs, including legal costs at the OMB, will be recovered and paid. That's mainly what it's saying, that those costs be included as well.

**Mr Hardeman:** Not having done a great lot of research on the issue, it seems somewhat inappropriate to me to suggest that in this case appeals to the Ontario Municipal Board would be paid for by an applicant, when in all other cases when you go to the Ontario Municipal Board the costs are shared by everyone involved. The Ontario Municipal Board does have the power to award cost. If it's a frivolous application, they would have that ability to do it in this. I would think it inappropriate to automatically assume that in these cases it was always the applicant who was wrong and they should always bear the cost of the OMB hearing.

**Mr Sergio:** But it's okay if the municipality now pays and pays in that event, as front-end facilitators? That's what you're saying, it's okay?

**Mr Hardeman:** In all fairness to the Ontario Municipal Board, if it's a frivolous application or if it shouldn't have been there, they have the power to award cost to the developer or to anyone else who inappropriately brings an application to the OMB. But it's fair to suggest that in all cases at the OMB, costs are borne by all parties, and I think it would be inappropriate to suggest in development charges that any application that went to the OMB was borne by one party. It may very well be because of a municipality's actions that took it to the OMB.

**Mr Sergio:** The problem with that, the way I see it, and I know we want to move expeditiously on this, is that this can drag on, and this becomes a burden on the rest of the taxpayers. I don't think it's proper if the municipality spends money. It may not be the municipality that is going to the OMB; it may be the municipality that may go to the OMB in support sometime of that particular applicant as well, but the municipality is fronting that applicant, if you will. They should be recovering those costs as well. We don't see a problem that municipalities, on behalf of all the taxpayers there, should be recovering those costs.

1730

**Mr Hardeman:** I think it would be inappropriate to have this instance where costs are being awarded to one party as opposed to the other. If a municipality passes a money bylaw and anyone in the municipality wants to object to that and take it to the Ontario Municipal Board, everyone covers the cost of that, both the appellant and the defendant, so I think that would be appropriate in this case too. If they happen to be or prove to be a frivolous case, the OMB does have the power to award costs to either side if the issue should not have been before it.

**The Chair:** Further discussion? I'll put the question. Shall the amendment carry? All those in favour? Opposed? The motion is lost.

Any further amendments to this section? Shall section 45, as amended, carry? All those in favour? Opposed? Section 45, as amended, carries.

Section 46.

**Mr Hardeman:** I move that section 46 of the bill be amended by adding the following subsection:

"Other provisions allowed

"(2) A front-ending agreement may contain other provisions in addition to those required under subsection (1)."

As an explanation, this motion makes clear that the mandatory provisions in the bill do not exclude other negotiated terms of an agreement.

**The Chair:** Further comment? Shall the motion carry? All those in favour? Opposed? It's carried.

Any further comments or amendments to section 46? Shall the section carry? All those in favour? Opposed? Section 46, as amended, carries.

Sections 47, 48 and 49: Are there any amendments or comments? Shall sections 47, 48 and 49 carry? All those in favour? Opposed? Sections 47, 48 and 49 carry.

Section 50.

**Mr Hardeman:** I move that section 50 of the bill be amended by adding the following subsection:

"Same

"(2.1) If the Ontario Municipal Board terminates the agreement or makes an order under clause (2)(c), the board may order the municipality to refund any amount paid under the agreement in excess of,

"(a) if the agreement is terminated, what would have been payable under the development charge bylaw, or

"(b) if the agreement is amended, what would have been payable under the amended agreement."

In explanation, this motion gives the OMB the express power to refund overpayments made under the front-ending agreement.

**The Chair:** Any comments? Shall the amendment carry? All those in favour? Opposed? The amendment carries.

**Mr Hardeman:** I move that subsection 50(3) of the bill be amended by striking out "Unless the Ontario Municipal Board orders otherwise" at the beginning.

In explanation, the OMB will not have the power to impose a different effective date of the agreement. The agreement will take effect on the day it was signed, not the day the OMB decides.

**The Chair:** Further comment? Shall the amendment carry? All those in favour? Opposed? The amendment carries.

**Mr Sergio:** On subsection 50(5) of the bill, I move that section 50 of the bill be amended by adding the following subsection:

"Same

"(5) Despite subsection (1), the Ontario Municipal Board may, where it is of the opinion that the objection to the agreement relates to a matter that was, or more properly should have been, raised as an objection in the appeal of a development charge bylaw, dismiss the

objection without holding a full hearing after notifying the person filing the objection and giving that person an opportunity to make representations as to whether or not there should be a full hearing."

**The Chair:** Questions or comments?

**Mr Hardeman:** I'd just point out that section 4 already deals with a similar situation and that's why I will be voting against this motion.

**Mr Sergio:** Are you saying it's redundant?

**Mr Hardeman:** Yes.

**Mr Sergio:** Then why don't you support it?

**Mr Hardeman:** We don't want to make the book any bigger than it needs to be.

**The Chair:** Seeing no further discussion, I put the question. Shall the amendment carry? All those in favour? All those opposed? The amendment is lost.

Any further amendments or comments on section 50? Shall section 50, as amended, carry? All those in favour? Opposed? Section 50 carries.

Are there any comments or questions or amendments on section 51? Shall section 51 carry? All those in favour? Opposed? Section 51 carries.

Section 52.

**Mr Hardeman:** I move that subsections 52(2) and (3) of the bill be struck out.

**The Chair:** Comments or questions? Shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 52, as amended, carry? All those in favour? Opposed? Section 52 carries.

**Mr Hardeman:** I move that subsection 53(2) of the bill be struck out and the following substituted:

"When amounts payable

"(2) An amount that is payable under subsection (1) is payable upon a building permit being issued for the development unless the front-ending agreement provides for the amount to be payable on a later day or on an earlier day as allowed under subsection (2.1).

"Same

"(2.1) A front-ending agreement may provide that an amount payable under subsection (1) for development that requires approval of a plan of subdivision under section 51 of the Planning Act or a consent under section 53 of the Planning Act and for which a subdivision agreement or consent agreement is entered into, be payable immediately upon the parties entering into the subdivision or consent agreement."

As an explanation, this motion clarifies that the front-ending agreement can provide that the amount is payable at subdivision or a later date.

**The Chair:** Further comments or questions? Shall the amendment carry? All those in favour? Opposed? The amendment carries.

**Mr Sergio:** I move that subsection 53(2) of the bill be amended by striking out "on a later day" at the end and substituting "on a different day."

That is to specifically collect it any other day so we have some flexibility there between the applicant and the municipality.

**The Chair:** Further comment or question? Shall the amendment carry? All those in favour? Opposed? The amendment is lost.



Any further comments or questions on section 53? Shall section 53, as amended, carry? All those in favour? Opposed? Section 53 carries.

Are there amendments or comments on section 54? Shall section 54 carry? All those in favour? Opposed? Section 54 carries.

Section 55.

**Mr Hardeman:** I move that subsection 55(3) of the bill be amended by striking out "the other parties" in the second line and substituting "parties."

As an explanation, this was a request of municipalities to make sure that it could also include municipalities as opposed to other parties, that it could include any party.

**The Chair:** Further questions or comments? Shall the amendment carry? All those in favour? Opposed? The amendment carries.

**Mr Hardeman:** I move that section 55 be amended by adding the following subsections:

"Money held until objections disposed of

"(4) If an objection to a front-ending agreement is made, the municipality shall retain any money received from persons who are not parties to the agreement until all the objections to the agreement are disposed of by the Ontario Municipal Board. If the board makes an order that the agreement be terminated unless the parties amend it in accordance with the board's order the municipality shall retain the money until the agreement is either terminated or amended.

"Application to amendments

"(5) Subsection (4) applies, with necessary modifications, with respect to amendments to front-ending agreements."

This just clarifies that the municipality holds the money until there is a hearing.

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**The Chair:** Further questions or comments? Shall the amendment carry? All those in favour? Opposed? The amendment carries.

Any further comments or amendments to section 55? Shall section 55, as amended, carry? All those in favour? Opposed? Section 55 carries.

Section 56.

**Mr Hardeman:** I move that section 56 of the bill be struck out and the following substituted:

"Credits

"56. (1) A person is entitled to be given a credit towards a development charge for the amount of their non-reimbursable share of the costs of work under a front-ending agreement.

"Restriction on the amount

"(2) If the work would result in a level of service that exceeds the average level of service in the 10-year period immediately preceding the preparation of the background study for the development charge bylaw, the amount of the credit must be reduced in the same proportion that the costs of the work that relate to a level of service that exceeds that average level of service bear to the costs of the work. Any regulations relating to the level of service and average level of service for the purposes of paragraph 3 of subsection 5(1) also apply, with necessary modifications, for the purposes of this subsection.

"Credits are treated like section 39 credits

"(3) Credits under this section shall be treated, for the purposes of this act, as though they were credits under section 39."

In explanation, since a bylaw is required in order to enter into a front-ending agreement, the 10-year average service level calculation is now the same as that which was used in the development charge background study. This change also clearly indicates that credits given under section 56 are to be used as any other credits given in this bill.

**Mr Sergio:** If there is an agreement that it's a portion that is non-refundable, it's gone, forget it, you won't see it any more. Why is this applicant now expected to get a portion of this refund when it is non-refundable and this was already agreed when the agreement was signed?

**Mr Hardeman:** I don't think anything that is non-refundable is being indicated that it would be refunded.

**Mr Sergio:** That's the way I read it. "56(1) A person is entitled to be given a credit towards a development charge for the amount of their non-reimbursable share of the costs...." If that's non-reimbursable, what do they expect to get back?

**Mr Hardeman:** I think this is an issue where they had contributed to a development charge to build a road going to the development. It's non-reimbursable, but they have a credit for it. This issue deals with those credits. If they invested \$100,000 to build a road leading to the development, they would now have a credit for that and this is the issue dealing with that credit.

**Mr Sergio:** Are you talking about a refundable deposit?

**Mr Hardeman:** No. Part of what they contributed to the building of that road may have been, in a front-ending agreement, to serve their development, but part is that they are supposed to get a credit for future development when someone else utilizes that capacity.

**Mr Sergio:** It doesn't say that.

**Mr Hardeman:** That's what we're working on.

**Mr Sergio:** It doesn't say that, but I'll take the majority's views here.

**The Chair:** Further comments? I'll put the question. Shall the amendment carry? All those in favour? All those opposed? The amendment carries.

Any further amendments or comments on section 56? Shall section 56, as amended, carry? All those in favour? All those opposed? The section carries.

Any comments or questions on sections 57, 58 or 59? Shall sections 57, 58 and 59 carry? All those in favour? Opposed? Carried.

Section 60.

**Mr Hardeman:** I move that subsection 60(2) of the bill be struck out and the following substituted:

"Exception for local services

"(2) A condition or agreement referred to in subsection (1) may provide for:

"(a) local services, related to a plan of subdivision or within the area to which the plan relates, to be installed or paid for by the owner as a condition of approval under section 51 of the Planning Act;

"(b) local services to be installed or paid for by the owner as a condition of approval under section 53 of the Planning Act.

"Limitation

"(2.1) This section does not prevent a condition or agreement under section 51 or 53 of the Planning Act from requiring that services be in place before development begins.

"Notice of development charges at transfer

"(2.2) In giving approval to a draft plan of subdivision under subsection 51(31) of the Planning Act, the approval authority shall use its power to impose conditions under clause 51(25)(d) of the Planning Act to ensure that the persons who first purchase the subdivided land after the final approval of the plan of subdivision are informed, at the time the land is transferred, of all the development charges related to the development."

**The Chair:** Further questions or comments? Shall the amendment carry? All those in favour? Opposed? The amendment carries.

Any further amendments or comments on section 60? Shall section 60 as amended carry? All those in favour? Opposed? Section 60 carries.

Section 61.

**Mr Hardeman:** I move that clause 61(1)(b) of the bill be struck out and the following substituted:

"(b) for the purposes of clause 2(3)(b), prescribing classes of residential buildings, prescribing the maximum number of additional dwelling units, not exceeding two, for buildings in such classes, prescribing restrictions and governing what constitutes a separate building."

**The Chair:** Questions or comments? Shall the amendment carry? All those in favour? Opposed? The amendment carries.

**Mr Hardeman:** I move that clauses 61(1)(e) and (f) of the bill be struck out and the following substituted:

"(d.1) governing the determination as to whether the council of a municipality has indicated, for the purposes of paragraph 2.1 of subsection 5(1), an intention to ensure that an increase in need for services will be met;

"(e) governing the determination of the level of service and the average level of service for the purposes of paragraph 3 of subsection 5(1);

"(f) for the purposes of paragraph 4 of subsection 5(1), governing the determination of excess capacity and whether a council has indicated an intention that excess capacity would be paid for by new development."

**The Chair:** Questions or comments? Shall the amendment carry? All those in favour? Opposed? The amendment carries.

**Mr Hardeman:** I move that clause 61(1)(i) be amended by striking out "or indices" in the first line.

**The Chair:** Comments? Shall the amendment carry? All those in favour? Those opposed? The amendment is carried.

**Mr Hardeman:** I move that subsection 61(1) of the bill be amended by adding the following clause:

"(i.1) governing reductions, under subsection 5(2), to adjust for capital grants, subsidies and other contributions, including governing what are capital grants, subsidies and other contributions for the purposes of that subsection and how much the reduction shall be for such grants, subsidies and other contributions."

**The Chair:** All those in favour of the amendment? Shall the amendment carry? Opposed? Carried.

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**Mr Hardeman:** I move that clauses 61(l), (k), (n), (o) and (p) of the bill be struck out and the following substituted:

"(k) prescribing, for the purposes of paragraph 10 of subsection 5(6), services for which there is no percentage reduction;

"(n) for the purposes of clause 12(1)(b), governing notice of meetings;

"(o) for the purposes of subsection 13(2), governing notices of the passing of development charge bylaws;

"(o.1) requiring municipalities to keep records in respect of reserve funds and governing such records;

"(p) prescribing the minimum interest rate or a method for determining the minimum interest rate that municipalities shall pay under subsections 18(3) and 25(2) and section 37."

**The Chair:** Shall the amendment carry? All those in favour? All those opposed? The amendment carries.

**Mr Hardeman:** I move that subsection 61(1) of the bill be amended by adding the following clause:

"(r.1) requiring municipalities to prepare and distribute pamphlets to explain their development charge bylaws and governing the preparation of such pamphlets and their distribution by municipalities and others."

**The Chair:** Shall the amendment carry? All those in favour? Opposed? The amendment carries.

**Mr Sergio:** I move that section 61 of the bill be amended by adding the following subsection:

"Limitation for prescribing ineligible services

"(1.1) Regulations made under clause 61(1)(d) prescribing services for which development charges may not be imposed and regulations amending or repealing such regulations are effective only if they are filed under the Regulations Act before January 1, 1999."

That is to insert a sunset clause, if you will. There's nothing more to it than that.

**The Chair:** Questions or comments? Seeing none, shall the amendment carry? All those in favour? Opposed? The amendment is lost.

Any further questions or comments on section 61? Shall section 61, as amended, carry? All those in favour? Opposed? The section carries.

Section 62, any questions or comments? Shall section 62 carry? All those in favour? Opposed? Section 62 carries.

Section 63.

**Mr Hardeman:** I move that section 63 of the bill be amended by adding the following subsection:

"Application of old act

"(2.1) A municipality may, under the old act, amend or repeal a development charge bylaw with respect to which the old act applies under subsection (2) but the municipality may not pass a new development charge bylaw under that act."

**The Chair:** Questions or comments? Shall the amendment carry? All those in favour? Opposed? The amendment carries.

Any further questions or comments to section 63? Shall section 63, as amended, carry? All those in favour? Opposed? Section 63 carries.

Section 64.



**Mr Sergio:** I move that section 64 of the bill be struck out and the following substituted:

"Reserve funds under the old act

"64. The old act continues to apply with respect to a reserve fund under a development charge bylaw under the old act that expires or is repealed during the transition period or expires, under section 63, at the end of the transition period."

It just deals with the transitional period for reserve funds, nothing more than that.

**The Chair:** Questions or comments? Shall the amendment carry? All those in favour? All those opposed? The amendment is lost.

**Mr Sergio:** I move that paragraph 3 of subsection 64(3) of the bill be amended by striking out "Five years" at the beginning and substituting "Ten years."

**The Chair:** Questions or comments? Shall the amendment carry? All those in favour? Opposed? The amendment is lost.

Any further questions or comments to section 64? Shall section 64 carry? All those in favour? Opposed? Section 64 carries.

Section 65.

**Mr Hardeman:** I move that paragraph 2 of subsection 65(1) of the bill be struck out and the following substituted:

"2. Notices required under paragraph 1 must meet the requirements prescribed in the regulations and shall be given in accordance with the regulations."

**The Chair:** Questions or comments? Shall the amendment carry? All those in favour? Opposed? The amendment carries.

**Mr Sergio:** I move that paragraph 4 of subsection 65(1) of the bill be amended by striking out "90 days" in the first line and substituting "365 days."

**The Chair:** Questions or comments? Shall the amendment carry? All those in favour? Opposed? The amendment is lost.

Further questions or comments to section 65? Shall section 65, as amended, carry? All those in favour? Opposed? The section carries.

Section 66, any questions or further amendments? Shall section 66 carry? All those in favour? Opposed? Section 66 carries.

Section 67; a note for your information. Any further amendments or comments on section 67?

**Mr Hardeman:** I'm not sure about other members of the committee, but I will be voting against section 67.

**Mr Marchese:** Could we have an explanation of the effect of voting against that?

**Mr Hardeman:** That's my right as a committee member.

**Mr Marchese:** I just want to know why you're voting against that section.

**Mr Hardeman:** I believe it's no longer required because of other changes. We will be proposing to put it in regulations as opposed to legislated in the bill.

**Mr Marchese:** What is the effect of that? You're going to be putting what in the regulation?

**Mr Hardeman:** The requirements that are in section 67.

**The Chair:** Further questions or comments? Shall the section carry? All those in favour? All those opposed? Section 67 is lost.

Section 68.

**Mr Hardeman:** I move that subsection 68(2) of the bill be struck out and the following substituted:

"Can be included as capital cost

"(2) For the purposes of developing a development charge bylaw, the debt may be included as a capital cost subject to any limitations or reductions in this act or the regulations."

**The Chair:** Questions or comments? Shall the amendment carry? All those in favour? Opposed? The amendment is carried.

Further questions or comments on section 68? Shall section 68, as amended, carry? All those in favour? Opposed? The section carries.

Further amendments or comments on section 69? Shall section 69 carry? All those in favour? Opposed? Section 69 carries.

Section 70.

**Mr Hardeman:** I move that clauses 70(a) and (b) of the bill be struck out and the following substituted:

"(a) governing notices for the purposes of paragraph 2 of subsection 65(1);

"(b) for the purposes of section 68, limiting the circumstances in which a debt may be included as a capital cost and prescribing reductions that shall be made if a debt is to be included as a capital cost;

"(b.1) setting out transitional rules relating to credits given under section 14 of the old act;"

**The Chair:** Further questions or comments? Shall the amendment carry? All those in favour? Opposed? The amendment carries.

**Mr Hardeman:** I move that section 70 of the bill be amended by adding the following subsection:

"Same

"(2) Regulations under clause (1)(b.1) may provide for procedures to apply in relation to credits given under section 14 of the old act and, without limiting the generality of the foregoing, such regulations may provide for appeals to the Ontario Municipal Board."

**The Chair:** Questions or comments? Shall the amendment carry? All those in favour? Opposed? The amendment carries.

Further amendments or comments to section 70? Shall section 70, as amended, carry? All those in favour? Opposed? Section 70 carries.

Section 71, any comments or amendments? Shall section 71 carry? All those in favour? Carried. None opposed.

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Section 72, any comments or amendments? Shall section 72 carry? All those in favour? Opposed? Section 72 carries.

**Mr Marchese:** I want to point out that the time has run out, but if people want to stay and finish this, I'm willing to do that.

**The Chair:** We're very close. Is there unanimous consent to finish our day's work? I do believe our colleagues appreciate this. We'll continue then. Thank you.

Mr Hardeman, we'll let you start on this one. The clerk indicates to me that this amendment is out of order.

**Mr Hardeman:** I believe we have unanimous consent to include it in this bill.

**Mr Marchese:** How do you know that?

**The Chair:** Do we have unanimous consent?

**Mr Marchese:** Okay.

**The Chair:** We have unanimous consent.

**Mr Hardeman:** I move that the bill be amended by adding the following heading and sections:

"AMENDMENTS TO THE

"REGIONAL MUNICIPALITY OF WATERLOO ACT  
"AND THE REGIONAL MUNICIPALITIES ACT

"72.1(1) Section 3 of the Regional Municipality of Waterloo Act, as amended by the Statutes of Ontario, 1996, chapter 32, section 94, is repealed and the following substituted:

"Composition of councils

"3(1) The council of each area municipality shall be composed of a mayor, who shall be elected by a general vote of the electors of the area municipality and shall be the head of council, and the following number of other members of council:

"1. The city of Cambridge — Nine members, three of whom shall be elected by general vote of the electors of the city as a member of the council of the city and of the regional council and six of whom shall be elected by the wards as members of the council of the city.

"2. The city of Kitchener — In respect of the 1997 regular municipal election, 10 members elected by wards. In respect of subsequent regular municipal elections, the number of members determined by bylaw of the city, six of whom shall be elected by the electors of the city as members of the council of the city and of the regional council.

"3. The city of Waterloo — Ten members, three of whom shall be elected by general vote of the electors of the city as members of council" —

**Interjection:** You've got an old version.

**Mr Sergio:** I don't think you have to read all the six or seven pages.

**Mr Hardeman:** We don't have to read them all?

**Mr Sergio:** I don't think so.

**Mr Hardeman:** Madam Chair, if I could go back to starting with the city of Waterloo, it's "eight members, three of whom shall be elected by general vote of the electors of the city as members of the council of the city and of the regional council and five of whom shall be elected by wards" —

**Mr Marchese:** We can probably move to dispense with reading it all. We could, but there is a slight problem with this. I didn't know as of today where we were likely to introduce this amendment. You did say that we have unanimous consent, but I'm not sure whether you've checked this out with our House leaders. Are you saying you've done that?

**Mr Hardeman:** Which?

**Mr Marchese:** This particular motion you're reading for the record, you indicated there was unanimous consent. Now I personally don't have any problems with

that, but as of today when I was checking this out, we weren't aware of where you or your government were going to bring these changes. You're now saying, "Here it is," and you said there's unanimous consent. You didn't mean us, you probably meant by the House leaders. Is that correct? Are you aware of that?

**Mr Hardeman:** I'm not aware of whether the House leaders have actually made that decision. My understanding was that if we were to bring it forward, there would be unanimous consent to approve this amendment.

**Mr Marchese:** I just want to state that this is a particular problem for me. Personally, I don't disagree, except I had no knowledge of when you were going to introduce it and to what bill you were going to attach it. Now I realize you're attaching it to this particular bill. My problem is that I'm not sure our House leaders are aware of what you're doing. That presents a problem for me. If you're telling me that you either don't know or you know that the House leaders agreed, then I'm comfortable with it, otherwise we have a slight problem.

**Mr Hardeman:** If you'll just give me a minute, I'll try and find out about that. I'm not aware. I just put forward what I know to you, which was that if we put forward unanimous consent, we would receive that.

**Mr Marchese:** I don't mind waiting a moment if you can check that out.

**The Chair:** Would it be helpful, colleagues, to seek unanimous consent to stand down this particular section, since we're very close to finishing, and going on and then coming back?

**Mr Marchese:** Yes.

**The Chair:** Thank you very much. We will do just that and we will move then to section 73. But we'll need Mr Hardeman.

**Mr Marchese:** Another member could read it for the record, Madam Chair. That'll be fine.

**The Chair:** All right. Section 73, there are no amendments that I am aware of. Are there any amendments or comments on section 73? Seeing none, shall section 73 carry?

**Mr Ted Chudleigh (Halton North):** Is it part of 73 or is it still part of 72.1?

**The Chair:** This is 73. We're standing down 72.1.

**Mr Marchese:** All in favour?

**The Chair:** They tell me that these will be renumbered as this one is introduced, and that's quite normal.

Section 73 and section 74, are there any amendments or comments? Seeing none, shall sections 73 and 74 carry? All those in favour? Opposed? Sections 73 and 74 carry. Mrs Fisher, please, section 75.

**Mrs Barbara Fisher (Bruce):** I move that section 75 of the bill be amended by adding the following subsection:

"(6) Sections 72.1 and 72.2 come into force on the day this act receives royal assent."

**The Chair:** I'm sorry. I've just been informed that this amendment apparently is consequential and has to be held until the one that's stood down is cleared up.

*Interjections.*

**The Chair:** Why don't we recess for five minutes?

**Mr Marchese:** No, I wouldn't do that.

**The Chair:** No? Stay where we are?



**Mr Marchese:** Yes. My sense is we'll know rather quickly whether there's agreement or disagreement. If there's no agreement by the House leader, we'll just have to come back.

**The Chair:** I understand.

**Mr Sergio:** Evidently, though, there is no agreement, otherwise we would have known.

**The Chair:** We can't go any farther until we have an answer for this one because the others are consequential to this one.

**Mr Hardeman:** I just checked with staff, and in answer to the explicit question, have all three House leaders agreed to this, no, they have not. The amendments or the request for the amendments came forward from the region with unanimous support from all the —

**Mr Marchese:** I understand all of that. I'm aware of the issue.

**Mr Hardeman:** It was suggested that in order to accommodate this provision to be included with this bill they would contact the individual parties to the agreement to see whether there would be unanimous consent, and

that's where the unanimous consent came from. So with that, I would hope that we could proceed, but if not —

**Mr Marchese:** We have a problem. I'm dealing with this as well as the critic for municipal affairs. I was aware of the issue and I have personally no difficulties because I think it's a reasonable thing. The only problem is our House leader was dealing with this and so if there is no agreement by them, that means there's a problem of sorts and that needs to be sorted out. I'd rather not deal with this because that complicates it.

**Mr Hardeman:** Madam Chair, if I could, I would then request that if we do have a problem with it we stand it down until the first item on the agenda Wednesday, as opposed to finishing it today, so we could deal with this matter first thing and then finish the bill.

**The Chair:** Is there agreement by all members of the committee for that?

**Mrs Fisher:** Agreed.

**The Chair:** Thank you very much. We did a great job today. This committee stands adjourned. We'll meet on Wednesday following routine proceedings.

*The committee adjourned at 1810.*





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### STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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Mr David	Christopherson (Hamilton Centre / -Centre ND)
Mr Ted	Chudleigh (Halton North / -Nord PC)
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Mr Joseph	Spina (Brampton North / -Nord PC)

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Mrs Barbara	Fisher (Bruce PC)
Mr Bill	Grimmett (Muskoka-Georgian Bay PC)
Mr Ernie	Hardeman (Oxford PC)
Mr Rosario	Marchese (Fort York ND)
Mrs Julia	Munro (Durham-York PC)
Mr Mario	Sergio (Yorkview L)
Mr Joseph N.	Tascona (Simcoe Centre PC)

**Also taking part / Autres participants et participantes:**

Ms Joanne Davies

**Clerk / Greffière:** Ms Donna Bryce

**Staff / Personnel:** Mr Mark Spakowski, legislative counsel



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## **Legislative Assembly of Ontario**

First Session, 36th Parliament

## **Assemblée législative de l'Ontario**

Première session, 36<sup>e</sup> législature

# **Official Report of Debates (Hansard)**

**Wednesday 30 April 1997**

# **Journal des débats (Hansard)**

**Mercredi 30 avril 1997**

## **Standing committee on resources development**

## **Comité permanent du développement des ressources**

**Development Charges  
Act, 1996**

**Loi de 1996 sur les  
redevances d'aménagement**

**Water and Sewage Services  
Improvement Act, 1997**

**Loi de 1997 sur l'amélioration  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
RESOURCES DEVELOPMENT

Wednesday 30 April 1997

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU  
DÉVELOPPEMENT DES RESSOURCES

Mercredi 30 avril 1997

*The committee met at 1551 in committee room 1.*

## ELECTION OF VICE-CHAIR

**The Chair (Mrs Brenda Elliott):** Good afternoon, colleagues. We come to order. Our first order of business this afternoon, before we move into work on Bill 98, is the election of a Vice-Chair. It's my duty to call upon you to elect a Vice-Chair. I would ask if there are any nominations.

**Mr John O'Toole (Durham East):** I would move that the member for Oshawa, Jerry Ouellette, be appointed to Vice-Chair of this committee.

**Mr Doug Galt (Northumberland):** I'd be pleased to second that.

**The Chair:** Any further nominations?

**Mr Rosario Marchese (Fort York):** I'd like to nominate Marilyn Churley. I'm convinced we'll have enough support to win that one.

**The Chair:** All right. Any further nominations? I then declare the nominations closed.

**Ms Marilyn Churley (Riverdale):** I thank my friend for the nomination, but I will respectfully withdraw.

**Mr Marchese:** No speech?

**Ms Churley:** I know when I'm done. Why put myself through that humiliation?

**Mr Marchese:** She looked at the numbers?

**Ms Churley:** I looked at the numbers and thought, "No, this ain't gonna fly."

**Mr Ernie Hardeman (Oxford):** I noticed with the lawn signs as I arrived that Mr Ouellette was way ahead in the campaign.

**Ms Churley:** This is one of the few committees where we actually now will have some gender balance. I'm not as concerned as I am with some of the other committees.

**The Chair:** Are there any further nominations? Once again, I then declare the nominations closed.

I declare that Mr Ouellette is our new Vice-Chair. Congratulations. We welcome you to our committee.

**Mr Jerry J. Ouellette (Oshawa):** Thank you, Madam Chair.

**Ms Churley:** I'll be watching your every move.

**Mr Ouellette:** I'm sure you will.

**The Chair:** Are there any further motions?

**Mr E.J. Douglas Rollins (Quinte):** At this time I would like to move that Dr Doug Galt be the government member on the resources development subcommittee, as Mr John Baird is no longer on the committee.

**The Chair:** Any further discussion on this?

All those in favour of the motion? Opposed? The motion is carried.

## DEVELOPMENT CHARGES ACT, 1996

LOI DE 1996 SUR LES  
REDEVANCES D'AMÉNAGEMENT

Consideration of Bill 98, An Act to promote job creation and increased municipal accountability while providing for the recovery of development costs related to new growth / Projet de loi 98, Loi visant à promouvoir la création d'emplois et à accroître la responsabilité des municipalités tout en prévoyant le recouvrement des coûts d'aménagement liés à la croissance.

**The Chair:** We'll turn our attention, then, to complete the work that we began on Monday, which was clause-by-clause consideration of Bill 98. We found ourselves very near the end of the amendments and had begun work on amendments 72.1 and 72.2. At that point it was noted that unanimous consent was required. It was determined to seek further advice on this issue.

**Mr Hardeman:** I do believe at one point we did have what I thought was unanimous consent to introduce these amendments, upon which the record will show I started to read. I believe we had almost completed the first page of the amendment. It was then brought to our attention that there was some concern as to whether unanimous consent was what it should be.

I would ask, now that we've come back here two days later, for unanimous consent to continue reading the amendment and put it in the legislation.

**The Chair:** Do we have unanimous consent to go forward on this amendment?

**Interjections:** Agreed.

**Mr Marchese:** No, we don't.

**The Chair:** No, I do not hear unanimous consent.

**Mr Hardeman:** Madam Chair, I just wondered who was denying the unanimous consent, whether we could ask where the voice in the wilderness had come from, which caucus.

**The Chair:** Mr Marchese.

**Mr Marchese:** I will give an explanation of that so that Mr Ernie Hardeman can hear clearly who gave it. My name is Rosario Marchese, the member for Fort York. I happen to be the NDP member for that riding.

I should point out clearly that I was trying to be very helpful to your government, Mr Hardeman, because we had gone beyond the clock and we didn't have to. As you know, usually when 6 o'clock comes around, the proceedings of our working committee end. I was trying to be helpful to you and to your members and particularly trying to be helpful to staff, who would otherwise have to come back and sit through whatever we had to do. I felt we could do that in a matter of moments and be done with it.



**Mr Hardeman:** Madam Chair, if I might, the question is whether we have unanimous consent, not whether we are going to debate the issue. I just requested to know who was not giving unanimous consent.

**Mr Marchese:** Mr Hardeman, are you refusing to have me give an explanation? You asked who it was and now you're saying you don't want to know from the member what the arguments are? You just want a yea or a nay, is that what you're saying?

**Mr Hardeman:** I don't believe unanimous consent is an issue of why, it's an issue of who gives or does not give unanimous consent. That's the issue.

**The Chair:** Perhaps this is the place for me to step in and say we don't have unanimous consent, for a variety of reasons, I suspect. Since it isn't possible to move forward with that amendment, then perhaps, Mr Hardeman, it might be useful if you'd wish to withdraw that amendment.

**Mr Hardeman:** If we do not have unanimous consent, I believe it's your prerogative to rule it out of order.

**The Chair:** Okay, then I do rule it out of order and we'll move forward —

**Mr Marchese:** Madam Chair, I want to make a point. What I want to say — because Mr Hardeman clearly knows there might be some regional members here, and I'm not sure who they are; that's why he's playing politics with me — is that we're quite happy as NDPers to have the government bring forward a bill and pass it within one day, which would be unprecedented in this House. We're quite happy to assist the government and the regional government with respect to the amendments they want, within one day.

What I objected to was the fact that this government, through Mr Hardeman, was presenting a motion at the last moment, unbeknownst to me or the House leaders. It was a complete surprise. We've had discussions with the mayor about this issue and I gave support to the issue, but we had no discussion with the parliamentary assistant or their caucus or their House leader with respect to this issue at all. It was a complete surprise.

As we were reading the amendment, about which I was clueless, I discovered we were dealing with an issue that our House leaders were dealing with. I found it a complete surprise. I objected to that and I object to it now.

I want to let the folks know, if they're from the regional municipality of Waterloo, that we will pass it within one day. All the government has to do is to introduce it at the earliest possible convenience and it will be supported by us. For their sake, I want them to know that, for the record.

**Mr Hardeman:** If I could, Madam Chair, I would like to commend the member for that encouragement. We appreciate your offer to pass it expediently, to deal with this matter. I was not trying to infer anything different than that. It just would appear to us that the same things could be accomplished today as going through another day of legislative process, when we all agree with the process. We appreciate your offer.

**Mr Marchese:** On that point, the same could not be accomplished. A process for me is a critical matter. It isn't something that you can just dispense with at will. The government decided it was going to introduce this

amendment and attach it to Bill 98. That would be fine, had we known about it.

We had no clue. It was at the bottom of all these other amendments that we had. The only time I got to it was when I allowed the committee to finish all the business because it seemed we had very little left to deal with.

*Interjections.*

**Mr Marchese:** Mr Hardeman, I apologize. Just to finish the point based on what Mr Hardeman said, process is critical for me and it was not done properly. Had they told us about it, we probably would have agreed, had they done it right. It wasn't done right. It was a surprise. You just don't deal with issues of this kind in that way.

This has nothing to do with the amendments the regional municipality's trying to deal with, because I have no quarrel with what they're trying to do. I support it. In fact, they've gone through a great deal of consultation with a number of their communities. I think that's wonderful. But with respect to our own processes around here, it has to be done right.

**The Chair:** I thank you for your words. Clearly, there have been some communication problems in how this was brought forward or dealt with. But we do have to go on with today's business. I apologize to any citizens who may have come to Toronto today to this meeting because of this.

However, Mr Hardeman, I was in error. In fact, when a motion has been brought to the committee and has been moved, it has to be withdrawn by the mover. So for the record you do have to withdraw it — I can't rule it out of order; I apologize for that — at this time, is my understanding.

**Mr Hardeman:** First of all, before I totally withdraw it, I would like to point out Mr Marchese's comments about process being very important. If the issue is that this cannot be ruled out of order, then my question would be, why are we not continuing with the reading?

**Mrs Barbara Fisher (Bruce):** Yes, that's my question, too.

**Mr Hardeman:** If it had not been declared out of order when it was introduced, then I believe we could continue reading it into the record and make it part of the bill.

**Mrs Fisher:** My understanding is the only problem the other day was we were of the opinion that there was unanimous consent and there wasn't. Now we're back into our session, in essence —

**Mr Hardeman:** Having said that, I will withdraw the motion.

**The Chair:** All right. We'll move now to section 73, which we've already carried, section 74, which was already carried — we're moving now into section 75. The amendment on section 75 was moved by Mrs Fisher. Since that was a consequential amendment, it has to be withdrawn.

**Mrs Fisher:** I will withdraw.

**The Chair:** The next question that should be put is, shall section 75 carry?

All those in favour? Opposed? Section 75 carries.

Shall section 76, the short title of the bill, carry?

All those in favour? Opposed? It carries.  
 Shall the long title of the bill carry?  
 All those in favour? Opposed? It carries.  
 Shall Bill 98, as amended, carry?  
 All those in favour? Opposed? The bill carries.  
 Shall Bill 98, as amended, be reported to the House?  
 All those in favour? Opposed? It shall be reported.  
 That completes Bill 98. Thank you, everyone.

**The Chair:** We're just going to take a one-minute recess until everyone gets settled to begin work on Bill 107.

*The committee recessed from 1604 to 1607.*

#### WATER AND SEWAGE SERVICES IMPROVEMENT ACT, 1997

#### LOI DE 1997 SUR L'AMÉLIORATION DES SERVICES D'EAU ET D'ÉGOUT

Consideration of Bill 107, An Act to enact the Municipal Water and Sewage Transfer Act, 1997 and to amend other acts with respect to water and sewage / Projet de loi 107, Loi visant à édicter la Loi de 1997 sur le transfert des installations d'eau et d'égout aux municipalités et modifiant d'autres lois en ce qui a trait à l'eau et aux eaux d'égout.

**The Chair:** We'll begin the afternoon's work on Bill 107, clause-by-clause consideration. Are there any questions, comments or amendments to the bill, and if so, to what sections?

Are there any in section 1? Any discussion? Seeing none, shall section 1 carry?

All those in favour? Opposed? Section 1 carries.

Section 2: The first amendment is an NDP motion.

**Mr Marchese:** Madam Chair, I'm going to be withdrawing this motion.

**The Chair:** Sorry, was that for —

**Mr Marchese:** Subsection 2(2). Isn't that what you were asking?

**The Chair:** The one marked "1," amendment number 1?

**Mr Marchese:** I thought we were at subsection 2(2). Is that what you were leading to, Madam Chair?

**The Chair:** Yes.

**Mr Rollins:** There are four or five.

**The Chair:** There are several.

**Mr Marchese:** I'm withdrawing the first two.

**The Chair:** Perhaps the easiest way to refer to them would be the handwritten number in the upper right-hand corner.

**Mr Marchese:** Page 1, yes.

**The Chair:** You're not moving that amendment?

**Mr Marchese:** That is correct. I'm withdrawing it.

**The Chair:** Okay, that's withdrawn.

**Mr O'Toole:** Chair, are they withdrawing all of the amendments to 2(2)?

**Mr Marchese:** We're going page by page.

**Mr O'Toole:** Because there's a whole bunch of them.

**The Chair:** Page 2?

**Mr Marchese:** I withdraw that amendment as well, Madam Chair.

**The Chair:** Page 3? That's Mr Agostino. Could you read it into the record, please.

**Mr Dominic Agostino (Hamilton East):** I move that subsections 56.2(1) and (2) of the Capital Investment Plan Act, 1993, as set out in subsection 2(2) of the bill, be struck out and the following substituted:

"Prohibition on transfer of waterworks

"(1) No municipality shall transfer the ownership of all or part of a waterworks to another person.

"Prohibition on transfer of sewage works

"(2) No municipality shall transfer the ownership of all or part of a sewage works to another person."

**The Chair:** Any discussion or comment on this amendment?

**Mr O'Toole:** I find this amendment is kind of out of line in cases of smaller municipalities wishing to have an upper-tier municipality take control of their delivery of water and sewage services. This amendment will clearly restrict municipalities from making alternative delivery arrangements, so I can't support it.

**Mr Agostino:** If we recall, there are a number of amendments with the same overall message to them. I would say that 99.9% of the individuals who came to the table through three days of extensive hearings — it was almost unanimous, even including the majority of the private sector representatives here, that the municipalities should not in any way, shape or form sell their assets or transfer the ownership of the assets to a private corporation of any type, a private company, in order to give up control of the assets and the setting of the water rates and sewer rates in that particular municipality. So I'm surprised, in view of the fact we had three days of public hearings and almost unanimously — I can't think of one; I think there was one group that said it was a good idea. Every other group that came forward said it was a bad idea; why we would continue to go ahead and totally ignore those submissions if the public hearings had some meaning. I think that was the biggest message that came across and I would urge the government members to listen to that message and that was that the ownership should not be turned over.

**Mr Marchese:** We have a similar motion, so we will be supporting this amendment. We are very concerned about the possible privatization of waterworks and we think the government appears to be equally concerned — we're not quite sure — because they're saying, "We're not privatizing it," and it may appear as if they are saying they don't want to do that either. If they don't want to privatize it and are equally concerned as we are, then this is the motion to support.

Quite clearly, from our point of view, we are very worried about the potential and probability, I would argue, for many municipalities to privatize waterworks, sewage works, because they're getting less and less money from your government, Madam Chair; we've cut transfer payments to the municipalities by 40% in the last two years. These folks in these municipalities have to deal with that shortage, so they are going to look at this as a very strong possibility of being able to raise some money for themselves or recover some money. We feel many municipalities may not want to privatize it but will consider it in order to be able to deal with the cutbacks that you have already inflicted and with the download



that you're about to inflict on many municipalities. We want to work in partnership with M. Harris, if he's equally concerned about privatization and, if that is so, then his members should support this particular motion.

**Mr Galt:** Just a few points that I'd like to give to the opposition, where our position is on this particular motion. We believe this motion is unnecessary. This provision would even restrict transfer of things like water and sewer plants to the crown or to some other municipality. They pointed out earlier that the grant repayment provision of Bill 107 is really sufficient to protect the public investment in water and sewage infrastructure and that the grant repayment provision makes it uneconomical to sell facilities to the private sector without preventing desirable public-private partnerships to address future needs.

As I listen to the NDP member commenting on the real concerns about privatizing water and sewage works, it comes to mind that we went from 1990 to 1995, when municipalities had all kinds of opportunity to transfer, even without having to pay back these grants, and none of that happened during that time frame. If they were genuinely concerned, I would have expected they would have brought something in at that time.

Just simply with the grant repayment program, that is going to discourage any privatization in the future.

**Mr Floyd Laughren (Nickel Belt):** With all due respect, I think that's nonsense. I sat on this committee as we travelled around a bit of the province, to London and Toronto. I certainly heard a preponderance of evidence that people were very concerned about the way this bill is worded because of its permissiveness in allowing municipalities to do whatever they damn well please when they get squeezed by the government's down-loading. You don't have to be a rocket scientist to figure that out. Once that squeeze really hits those municipalities they're going to be looking around every nook and cranny and under every stone to find a dollar in order to prevent outrageous tax increases. Guess what will jump out at them? It will be the sewer and water services in that municipality.

If the minister, who appeared before this committee in London, was serious and honest in what he said and was not being disingenuous, then I see no reason why this committee would not accept this amendment, no reason at all. Because the minister was, to me, and correct me if I'm wrong, quite clear that he hoped municipalities would not privatize their systems. He was very clear about that. If that's true, then you've got the opportunity to make that a reality, because if you just leave it the way it is now, it's a matter of time. I don't know how many witnesses came before this committee and used the example of Great Britain, what a horror it turned out to be there. You can say this is not Great Britain. Of course it's not Great Britain, but it's privatization, which is exactly what they did, if privatization occurs here.

You have no protections in here if something is privatized — none. As far as the parliamentary assistant saying that having to pay back government grants is concerned, that is not a serious impediment to the private sector purchasing sewer and water systems. It is taxpayers' money that's gone to these municipalities and

there's no interest charged over the years on that money, that grant from the long-suffering taxpayers of this province. So I don't for the life of me know how you can in all honesty make an argument that this is not paving the way for privatization of our sewer and water systems.

If you don't believe it and you don't want to see it happen, as the minister indicated, then for heaven's sake here's your chance to do something about it. If you're just playing games with us, then say, "We believe in privatization and we anticipate it will happen," and vote against our amendments. I suspect that's what you'll do anyway, but here's your chance to show that we're wrong and we're blowing smoke — that I am, anyway; I don't know about Agostino, he doesn't blow smoke. But here's your chance to prove your intentions are honourable and that all you're trying to do is transfer the remaining 25% of sewer and water services to the municipality and nothing more, full stop, and it's part of the tradeoff for the disentanglement, as we called it when we were in government, in the delivery of services between the municipalities and the province.

If that's all it is, that's all that's involved here, and it's part of the tradeoff of the education costs and so forth, then say so: "That's all it is, and to prove it to you, we'll accept this amendment that forbids a municipality from selling to the private sector." That's all you have to do. That's not asking too much, I don't think. I don't think it's an unreasonable request at all. It's simply saying to you, put your money where your mouth is. In other words, accept an amendment like this.

I was very disappointed, given the comments of the minister, that the government didn't move such an amendment. I was taken aback. I can only assume that Mr Sterling knows what's afoot here and knows that you've got no intention of moving an amendment. I would assume he'd have some say in that. I go back a long way with Mr Sterling. We've been friends for a long time. I'm really disappointed that he would say one thing in London and have you do his dirty work and another thing here in Toronto, because that's what he's doing to you. He set you up. He said all those nice things in London and then says, "Now go into that committee room and do my dirty work, Doug." That's what he's saying, and you're obviously prepared to do it.

Anyway, I don't want to prolong the debate, because if there's anything I hate around this place it's a filibuster. I would simply say that I am really surprised and disappointed that you're obviously going down this path and you're determined not to be blown off it. I'm disappointed, and in terms of public policy, I think you're fundamentally wrong.

1620

**The Chair:** Mr Agostino.

**Mr Galt:** Madam Chair, if I could respond to that, with all due respect to the member for Nickel Belt, I do indeed take exception to his comments about my minister being serious and honest. I have worked with him since last August and I can assure you that he is a very serious and a very honest individual. I think it's most unfortunate that you would put that into the record.

**Mr Laughren:** I want to believe that too. We'll see.

**Mr Galt:** You look at the different repayments that will be necessary, places like the town of Haileybury, with some \$5.5 million, 85% would have to be returned; 75% in the township of Red Lake, some \$2.3 million. I just don't see how these communities are ever going to repay those kind of grants and then privatize. It's not in their minds. It's just not the kind of thing that's going to happen. This is a big deterrent. Before we even went out with this bill, 60 of 230 municipalities asked for these plants, to have them in their ownership. The argument is totally redundant that we're hearing here this afternoon.

**Mr Agostino:** I agree with what Mr Laughren said earlier. I think if we went around the room today there would not be one government member who would suggest that privatizing the ownership and control of water and sewer service is a good idea. Not one member of this committee on any side of the House went on record as saying it was a good idea; frankly, the reverse occurred. The minister himself, and the parliamentary assistant through debate hearings, consistently has said, "We don't think privatizing water and sewer services," not privatizing the operation of it but the ownership and setting of the rates, "is a good idea." That has been unanimous by these committee members. If I'm wrong, maybe members of the committee can come forward and say, "We believe it is a good idea." We haven't heard that yet.

The issue of the payback is simply a smokescreen and a feel-good mechanism. The reality is that of all the services that municipalities have and offer, water and sewer would be the biggest moneymaker to the private sector. Nobody is going to want to buy a transit system. I don't think you're going to see a lineup to buy the TTC and charge \$15 a ride and think the private sector is going to make money from it. Nobody's going to want to buy a health department and run a health department. Nobody's going to run a social services department. But when you talk about water and sewer services and the ability to control the rates, clearly there'd be a lineup miles long of private sector companies willing to come forward.

The payback of the infrastructure cost is simply a drop in the bucket. What would happen very clearly is a municipality would include that in the price. If there's a \$20-million payback to the province, for example, and \$200 million to buy that infrastructure, you just make it \$220 million and you roll that into the price of doing business. Then of course the private company just turns around and rolls that into the price of what it charges the consumer for water and sewer services. That to me is an absolute smokescreen. It's hogwash to even suggest for a second that is going to be a deterrent.

Outside of this government's obsession with privatization for absolutely everything the government should do — you very clearly believe that everything government does should be done by the private sector. I'm not sure what our job would be, except we should just lock the doors and go away and let the private sector do everything. I don't share that belief. I think there is a role for the private sector in some operations. There's a role for the private sector in some cases under some controls, but there's not a role, in my view, for the private sector

to own, operate and charge sewer and water rates. I'm as astonished as Mr Laughren is that you would not follow the lead that your own minister set in suggesting it was a bad idea. I was surprised that the government members did not. I fully expected there would be a government amendment, because I thought it was so clear and so obvious.

I don't understand. Even playing politics with it, this is the major controversial part of this bill. You could look like heroes, frankly. If you took this out of there, 90% of the people coming to the end of the table wouldn't have been there. I don't understand. You believe it's wrong. You don't think it should happen. You don't think it will happen. Then simply support the amendment and that's the end of the thing. Then you've got a pretty damned good bill, with a few exceptions in it, and one that most people can support. I don't understand why this government is being so stubborn, except simply trying to show: "We're the government. We have all the muscle. We don't care what anybody says. We don't care what the opposition says, we don't care what the public says, we're going to do it simply for the hell of it."

As farfetched as some people on the government side believe, the British experience can be repeated in this province once we allow the private sector to own, operate and set the rates. Without this amendment, you're going to do that.

**Mr John Gerretsen (Kingston and The Islands):** What I find so astonishing about this whole situation is that here Mr Galt and the government would like us to believe they've got no intent that these water and sewer projects can be sold, but they're not willing to put it in legislation. I suppose Hansard is full of speeches that have been given by people on all sides of the House, but at the end of the day what you're really left with is whatever piece of legislation is passed. That's the matter that people will be dealing with 10, 20, 30, 40 years from now, what it actually says in the legislation and not the kind of speeches that people have made about it.

It seems to me that government is about trust. To me, it seems like such a simple thing to do. If you really believe they wouldn't be sold, why not put it in the bill? It sure prevents an awful lot of arguments in the future if, let's say, a municipality were placed in a position — and, let's face it, you are putting much heavier loads and responsibilities on municipalities. You can disagree with our figures, you can disagree with the NDP figures, you can disagree with everything, but the bottom line still is that over 100 municipalities, in a non-partisan way, from an administrative viewpoint, have clearly indicated to the government and to the opposition parties that as a result of all of these different Who Does What downloadings that are taking place, they're going to have to raise their taxes if they want to give people the same kind of service as before. Those municipalities and those councils are going to be under pressure, because they don't want to unload a 20% or 30% tax increase to their particular ratepayers etc, so they're going to find ways — maybe not this year, maybe not next year, but at some point in time — in which they think they're going to economize. It may very well end up that one of these water plants is going to be sold because some council is under pressure



in a particular year to come up with the money etc. Yet you're trying to tell everybody, and your minister's been trying to tell everybody, "Don't worry, it's not going to happen," because of this, that or the other thing.

All I'm saying is that in order to forgo and forestall those kind of situations or temptations that may apply to certain municipalities at some point in time in the future, why don't you just put in the legislation exactly and in precise language what you intend to do? You don't want them to sell these plants? Put it in there. I'll tell you, if you don't put it in there, is it any wonder that a lot of people out there, never mind the opposition, a lot of the people who presented to this committee, are going to say, "If they're not putting it in the legislation, it must mean that at some point in time in the future the municipalities will have the authority to sell these plants."

I know you're not supposed to impute motives here or anything like that, but I'll tell you, that's the only logical conclusion that people can come to. This is a main issue. This is not something that is just forgotten about in a piece of legislation, what have you. This has been one of the central issues, from my reading of Hansard and from the presentations that have been made before this committee. If everybody agrees that municipalities shouldn't be selling these plants, put it in legislation. What could possibly be wrong with it? If it's just a power play, because the government says this and the opposition says that, "We've got to stick to our guns, we've got to do this, that or the other thing," I'm telling you, in the long run you're not doing the municipalities and the ratepayers and our individual citizens of this province any good.

If the public remains very sceptical about the intent of this legislation because of your insistence that a clear statement not be placed in the legislation that these facilities can be sold, I think you'll just have to bear the consequences of that, but it certainly leaves me with only one conclusion.

1630

**Mrs Fisher:** I won't talk a half an hour to make my points. I'll just make them pretty distinctly and succinctly.

I was in London as well, and I don't remember the minister saying that in fact this would encourage the municipalities towards privatization. If I recall, he expressed his opinion that he didn't feel it would be in the best interests of the communities to privatize the water and sewer systems. I also remember that he said, however, municipalities should be given the right to do business within their municipalities, as they have the capacity in their decision-making to do so.

I do recall, at another time, I think it was only a day or so ago, where one of the opposition members present searched for the word "disentanglement," and in that disentanglement discussion it was outlined that in fact had been a process that had been undertaken in previous governments. I happen to concur with that. In fact, disentanglement was in process prior to this government coming here and, as a result of that, I don't imagine any government that was looking at that restructuring or disentanglement route that it was going would not have considered every aspect of a municipality, including sewer and water. They just never got to doing anything about it and, as a result, we are.

I would agree with — I don't know his riding — Mr Gerretsen's statement with regard to government and trust; the member from Kingston, sorry. I would concur that any member sitting in the House today has to assume that we would offer that trust to be earned by the community, so I think in most cases any member sitting there does trust their local municipalities to make decisions in the best interests of the constituents they represent.

The bottom line of all of this is that certain participants came forward in an intervenor status during these hearings and until it was questioned, if one of the question-and-answer sessions didn't result in privatization coming up, I think it wouldn't have even been recorded in most cases. People came with other interests and I think perhaps the overshadowing privatization question has not been driven by the intervenors who came before us but instead by question-and-answer periods of certain representatives.

I would like to remind those present that, in fact, there's nothing today in legislation that restricts the sale of sewer and water systems. My understanding is in the city of Kingston, for example, they own their own water system. There is nothing prohibiting them today from stopping the sale of that system and so I guess they've been trusted in the past to act in the best interests of their people. I'm assuming that we can trust them in the future to do the same. I think the minister was quite clear in that the elected officials at a municipal level will represent their constituents and their best interests.

There is a very large deterrent not to get into the sale of water and sewer systems, only in the fact that the municipality has to raise the funds, any grants that were provided for the construction of those systems, back to 1978, and in most cases, that's prohibitive. If anybody would look at the economic sustainability of running one of these things privately, it wouldn't take them long to run away from that type of required debt repayment. Clearly the minister said it's not his desire to see it happen, but in this transition of responsibility to municipal government, we have to let municipal governments make decisions and we have to allow the elected officials to represent their constituents and their best interests.

**The Chair:** Colleagues, just for a moment, the legislative counsel, Mr Wood, would like to add a word of clarification on this amendment.

**Mr Michael Wood:** A number of members have made comments about a matter of interpretation of this motion, and in my role as counsel to the committee I feel it necessary to clarify at this point. The motion before you strikes out and replaces subsections (1) and (2) of section 56.2. It leaves subsection (3) intact. The result of that is that subsection (3), which represents an exception, still stands and the motion would not prohibit the transfer of ownership to another municipality. However, it would prohibit other transfers of ownership.

**Mr Laughren:** I just wanted to pick up on a couple of things that have been said. One has to do with the whole question of repayment of grants to municipalities back to 1978. Someone said that the municipalities couldn't afford to do that and it would be prohibitive. Municipalities wouldn't pay that; that's not who would pick up the tab for that. That would be built into the sale price to the

private sector. The private sector would pay for that charge back to 1978.

The private sector would say, "That's part of the cost of this facility that we're buying," plain and simple. They would have to pass it on back to the province, then — I appreciate that; I'm not trying to be silly about it — but the municipality would not have to pay that amount of money. Why would they? They'd just say to the private sector that is buying it, "Look, this is the price, and of course along with that are these grants, but don't think you're being hard done by; there's no interest charged for the last 15 or 20 years on this grant."

Let's put that to rest. The municipality isn't the one that is going to have to ante up to the bar with that amount of money, that grant; that would be looked after.

I guess it was the member for Bruce who in her spirited defence of the bill indicated that deputants didn't raise the issue of privatization unless they were prompted — I don't want to put words in her mouth — by members of the committee. That's more or less what she said. I find that a strange comment to make because virtually everybody who came before the committee was concerned about privatization and an amazing number of them — I didn't know so many people in this province read the international press — knew what had gone on in Great Britain.

We have a very literate, well-read electorate in this province. I don't know whether they do it through the Internet or whether they pick it up at these bookstores or newsstands and read the UK press. An amazing number of them knew what a disaster privatization was in Great Britain, and I was very impressed by that. I would take issue with the member for Bruce that people didn't come with that in their minds. They sure did, because they knew what the consequences had been elsewhere.

We kept looking for examples, and a number of the deputants who seemed to really be on top of this issue were asked: "Do you know any jurisdictions where this improved the delivery of water and sewer either in price or in quality or in service?" We couldn't extract that from any of the people. Maybe the parliamentary assistant can read off a string of jurisdictions where privatization of sewer and water lowered the price, improved the service and made everybody happier.

I'd be interested in knowing that because I'm obviously not as well-read as some of the people who came before the committee, because they were really plugged into the international press, particularly the UK press. I'd be interested in knowing more about that.

**Mr Agostino:** I'm going to protract the debate, but I think this is clearly the fundamental issue of this bill and basically the direction of this bill. Frankly, I think you will be surprised at the level of opposition you will face once you put this bill through, unamended, as it seems that the government members have been given their marching orders to do.

There are certain things that government can privatize and frankly only people affected may care or may respond. The privatization of something as essential and as fundamental as water and sewer, and the spectre of happening here what has happened in Great Britain, I think most Ontarians from all walks of life, all political

parties, will see this issue for what it is and will see the risks involved in this.

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One of the members on the government side suggested earlier that municipalities have had this power all along; municipalities have always had the ability to do this if they chose to. But you can't look at this in isolation. We can't look at this without reminding ourselves of Bill 26, without reminding ourselves that the provisions that were in there in cases for referendums had been taken away once you passed Bill 26. Therefore, you took away the protection that taxpayers had to approve or disapprove of an ownership transfer.

The reason that municipalities may never have considered this in the past is, first of all, obviously municipalities are responsible but they have never, ever faced the downloading and the dumping from a government in the history of this province that they face from your government. It is that simple.

Municipalities don't want to sell the service. Municipalities are not interested in trying to sell this, but also they don't want to pass 30% or 40% increases to their taxpayers, and that's going to be the tradeoff. Municipalities, as a result of what you have done, are going to be faced with a tradeoff of massive tax hikes, a massive reduction in services or selling or privatizing certain parts of their operation where there's money to be made. It is that simple.

Most municipal councillors do not run on a platform of saying, "I'm going to privatize your water and sewer," but most of them don't run on a platform of increasing their taxes by 30% or 40% either. When they're faced with the two options, this may be one that municipalities will buy into. That's why it hasn't happened in the past, because in the past, provincial governments have seen a responsibility to transfer an appropriate amount of money to municipalities in order to carry on municipal services and operations as part of our responsibility as a provincial government.

You've taken that away. You're out of the business of providing transfer funds to municipalities, so you're going to stick them on the backs of the senior citizen who can't afford it and may lose their home, or of a disabled person on a fixed income. You're going to transfer it on to them. That's a substantial difference between five, 10, 15, 20 years ago and today, with the challenges municipalities have to face.

You can't have it both ways. You can't dump the services you have. You can't dump the cost to the municipal sector and then at the same time expect municipalities not to make decisions that may be difficult. This will be a very difficult decision and one that in the short term they may see as a better option than 30% or 40%, which would mean oblivion for those councillors at the next municipal elections.

You have to think long and hard about what you're doing here. As I said earlier, I would be interested, and if any members of the committee believe it's a good idea for municipalities to privatize water and sewer, please come forward, get on the record and say that. But if you don't believe that, for the life of me, I can't understand



why you'd vote against such a simple amendment unless you're simply saying it's okay to do it.

You can't have it both ways. You can't say, "It's a bad idea, but we're not going to vote against it." If you vote against this amendment, the message you're sending out, despite what you say, is you can talk the talk but you won't walk the walk. You're not willing to do it. You're not willing to put in legislation to prohibit it. That means you believe it's a good idea. If you don't believe it, then I challenge you to come forward and support this amendment.

Have some guts to say to your minister and to the marching orders you receive from the Premier's office, "We don't think it's in the best interests of the municipalities, the people they represent and the taxpayers of Ontario to privatize it." Any other message you send out means you agree with privatizing water and sewer services in Ontario.

**Mr Gerretsen:** I've already said what I was going to say and I really don't want to repeat myself, but this is in response to the comment that was made by the member for Bruce. It just so happens that yes, the city of Kingston owns its own water and sewage facility, but in the new city of Kingston, which will include Kingston township, there happens to be a plant that was built under precisely these kinds of circumstances and it's presently owned by the province.

That facility never would have been built to the standards it has been if it had not been purely government money that initially went into it. The local municipality never could have afforded that. So that may very well happen to that second plant, the privatization of it.

You've got to remember that the plants we're talking about are basically located in those municipalities that simply did not have the ability to build these plants themselves. That's how the province got into this business however many years ago. They were usually smaller municipalities and those municipalities couldn't afford, even with government grants, to build their own facilities.

Those plants are, by and large — I've been through a few of them, not recently, but five, six, seven years ago — of a higher standard than the average municipally owned water and sewage facilities, so they are a very attractive investment to the private sector. The likelihood of them being sold and then in effect the ratepayers in that community being held hostage to whatever the private entrepreneur wants to charge by way of water and sewage rates is much higher than you think.

This isn't just some sort of philosophical argument as to whether or not government should do it or whether the private sector could do it that we could have about a lot of things; in this particular case, people will simply not have any other alternative. They will either have to pay those new rates that come into being or not, unless you're going to structure some sort of system that the people, in effect, will have — I see Mr Hastings, shaking his head there. I would like to know what that system is going to be that's going to give some —

**Mr Rollins:** He's not from Hastings.

**Mr Gerretsen:** That's why the member from Hastings should never sit next to Mr Hastings, and we don't get into this kind of confusion.

Anyway, I've said everything I was going to. You're making a big mistake, and if you really don't think it's going to be privatized, just put it in the bill.

**Mr O'Toole:** I will be succinct. To make two points, it's clear from the debate here that we disagree. We believe it's a deterrent, the fact that they're going to have to pay back the crown, and it's clear the opposition believes in state control. The government, must we remind members, still has the responsibility for regulating quality standards, whoever owns it.

I'm thinking we should move on. We've heard the debate. It's clear that we have different positions. We're clear that there's enough strength in 56.2(1) that requires the repayment that would make it uncompetitive.

**Mr Gerretsen:** Madam Chair —

**Mr O'Toole:** Speak in your turn.

**The Chair:** Mr Laughren.

**Mr Laughren:** I wanted to hear what Mr Gerretsen had to say.

**Mr Gerretsen:** He's yielding to me.

**Mr O'Toole:** It's not a dialogue.

**Mr Gerretsen:** It should be a dialogue.

I just want to make sure. Does Mr O'Toole then fundamentally disagree with what the parliamentary assistant said? He's not in favour of privatization, and you are. Is that correct?

**Mr O'Toole:** You weren't listening.

**Mr Gerretsen:** Oh, okay.

**The Chair:** Mr Laughren.

**Mr Laughren:** I must say that I thought Mr Agostino put the whole package together very articulately and laid it out just the way it is.

**Mr Gerretsen:** That's why he's our critic.

**Mr Laughren:** That's why he's your critic, that's right; your personal critic, perhaps.

I won't go on at length about it, but I do believe the downloading has cast this whole thing in a new light, that this isn't disentanglement. If this were disentanglement, I would have no problem supporting it, but it's not.

**Mr O'Toole:** Get that on the record.

**Mr Laughren:** No, I wouldn't. I'd have no problem at all. We were engaged in a similar kind of exercise and then it fell apart, for reasons that I hope we won't have to go into this afternoon. But anyway —

**Mr Ted Chudleigh (Halton North):** Thank you, we appreciate it.

**Mr Laughren:** I can tell you why.

**Mr O'Toole:** It would cost a lot of money.

**Mr Laughren:** We were engaged in a disentanglement exercise as well, so it would be a bit strange for me not to support the idea of streamlining the delivery of services in the province, which I do. But when we were doing it, there wasn't another agenda called downloading, and we know that's the agenda here.

Some of you were in the Legislature yesterday and some of you, I know, I drove out with my speech. Nevertheless, I pointed out that in the municipality where I live, the regional municipality of Sudbury, the officials at the region have come up with numbers. They've worked very hard on these numbers — and they haven't changed them since then, as far as I know — which indicated what this downloading is going to cost that municipality.

It's going to cost them, they claim, \$1,500 per property taxpayer.

That seems extremely high to me, but even if it's less than that, can you imagine the pressure that municipal council is going to be under when they start staring those kinds of tax increases in the face? I know what they'll do. They will feel they have no choice, and they will privatize.

I hope those numbers aren't correct, but what it boiled down to is that there was about a \$105-million increase in costs to the municipality when property taxes were taken off for education purposes and all the other responsibilities were given to the municipality. It came to a net difference of \$105 million more to that regional municipality. Those are their numbers, not mine, just to put your mind at ease.

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If that's the case — and even if it's not quite as high as that — you know and I know the decision that municipality is going to come to when it's looking for dollars. You would do the same; you would, because you'd feel that you had no choice. That's the way it would be. I still await, in eager anticipation, the examples from the parliamentary assistant or from other government members on what a roaring success privatization has been in other jurisdictions.

I really want to know this and I think we have a right to know this before we vote for a bill that makes privatization a likelihood. If you've got examples, bring them forward so we can assess them in the cool light of day, but don't ask us as an act of faith to support a bill that will lead inevitably to privatization when the only examples that have been brought forward to this committee were from the UK, where it was a disaster when the Tories privatized it there; a disaster.

People are shaking their heads, but where's the evidence? There's lots of evidence on how bad it was. I want to see the evidence where it was good and where it served the people well. I'd be very happy to take the time to read that. If the Chair wanted to call a recess while we pored over the evidence, I'd support a recess for that purpose. I'd support even coming back at it next week when we could take a more sober look at it.

The way it is now, this is an act of faith and you're asking us to trust you. While I may trust you as individuals, collectively and ideologically I don't trust you. Although as individuals, of course, you're honourable members, I must say, don't ask me to do this. You wouldn't do it if it were us. If we said that we wanted to nationalize all the non-renewable resources in the province, would you accept it as an act of faith? No, you wouldn't, so don't ask us to accept in an act of faith that what you're going to do —

**Mr Agostino:** Don't count on that.

*Interjection.*

**Mr Laughren:** No, are you kidding? They wouldn't. Don't ask us to accept this.

I think the parliamentary assistant owes it to this committee to take this more seriously, the concerns about privatization, because this is not some kind of debate that's simply designed to oppose the government. This is a really important issue out there at the local level. You

may not have heard a lot about it yet, but I think you will over time. I think Mr Agostino was pointing that out. You're going to hear about it as it starts to happen, and I don't think you're treating this issue seriously enough.

I don't think you're treating the committee seriously enough when we ask for information. If you want the committee system to work well, it seems to me you treat the members of the committee in opposition, as well as the government members, more seriously when they ask for information. We're not getting it. We're not getting the evidence on which you're proceeding, if there is any. If you've got the evidence, you owe it to us to give it to us, and if you don't have the evidence, then what the hell are you proceeding for? I don't think this is a complicated issue but, my goodness, I just can't imagine your proceeding the way you are.

I simply ask the parliamentary assistant to give us more information before he asks us to vote, or certainly don't expect us to agree. But it's more important than that. You've got the numbers. When the vote's called, you'll win the vote on every single amendment if you want; that's obvious. That happens in every majority government, and you're no different that way.

That's not the issue, whether you can win the debate and get the bill through. The issue is whether you're treating members of the committee appropriately in providing information that we are seeking. I don't think you're doing it and I don't understand that. If you're so sure you're right, why can't you provide us with the information we seek?

It's not unreasonable information. It's not going to tie up the Ministry of Environment or any other ministry forever. I must say that I have a lot of respect for the public sector and the Minister of Environment, despite what they did with INCO in Sudbury — we won't get into that today, but I must say that did shake my confidence a lot — but nevertheless, I really hope the minister —

**Mr Agostino:** Tell us again about that.

**Mr Laughren:** You didn't hear about that?

**Mr Agostino:** No, not all the details.

**Mr Laughren:** There was a sulphur leak in 1995 — I think it was 1995, or maybe 1996 — and dozens of people, who had collapsed on the street went to hospital. A leak from the INCO operations, and dozens of people went to the hospital. Nobody died. The Minister of Environment laid number of charges against INCO, and on two different occasions didn't show up for the court case, until finally the judge threw it out. Then, to be fair, they went back again and now I think it is going to be heard in court.

*Interjections.*

**The Chair:** Colleagues, Mr Laughren has the floor.

**Mr Laughren:** It is going to be heard in court, to be fair, and we hope things will unfold the way they should. But can you imagine on two separate occasions not showing up for the trial? It could have been thrown out forever. Thank goodness it wasn't.

Anyway, back to this bill — and I appreciate the leniency with which I've been treated in dealing with this amendment, Madam Chair — I simply say that I don't think it's fair to this committee for the parliamentary



assistant not to bring forward information that we seek. I really don't believe it's an unreasonable request that we are making to the parliamentary assistant.

**Mr Galt:** Excuse me, Madam Chair, if I may respond to the comment as it relates to the gas leak and the trial in Sudbury, the court date that was set —

**Mr Laughren:** I think that's out of order.

**Mr Galt:** No, you asked the question and you wanted responses. What did happen was that there was a screwup or mess-up at the court, that neither side, neither party involved in the proceedings, was properly notified. Neither side appeared for the court date, on both occasions, so another court date has been set and there will be the proper procedure through the courts.

The member for Nickel Belt also made reference to how well-read the presenters to this committee were. You may have noticed that an awful lot of the presentations had a common core to them and if you want to find where that common core came from, you can go to the John Sewell website and you can find that information right there. It was a common source, I expect, that they got it from.

**The Chair:** Do I hear any further discussion on the amendment that has been moved?

**Mr Agostino:** Yes.

**The Chair:** Mr O'Toole?

**Mr O'Toole:** Put the question, please.

**The Chair:** Mr O'Toole has requested that the question be put. I would like to take this opportunity to caution members, though, that the clerk informs me — just so I get this right — that if the motion for closure comes, the proceeding is that we'll go to the original question, which will be: "Shall section 2 carry?" I would point out to the members that all of the amendments to section 2 would then not be put.

**Mr O'Toole:** Would not be put?

**The Chair:** That's right.

**Mr O'Toole:** Or be considered put?

**The Chair:** No, wouldn't be considered.

**Mr O'Toole:** So with respect to the request to put the question on this particular amendment, that would imply that all of the amendments for subsection 2(2) would be ignored?

**The Chair:** Yes, that is correct.

**Mr O'Toole:** I won't question that ruling. There are Liberal amendments; there are NDP amendments. They're mixed. There are different wordings; there are different intents. I am specifically referring to this, but I'll acquiesce to the ruling of the Chair and the committee.

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**The Chair:** Okay.

**Mr O'Toole:** I'll withdraw. I'll leave it to the Chair to call the question.

**The Chair:** Okay, then. Mr Agostino, further discussion.

**Mr Agostino:** It's withdrawn?

**The Chair:** Yes, that's what I'm hearing. Mr Agostino, did you wish further discussion?

**Mr Agostino:** Yes, I would.

**The Chair:** Excuse me, I would like to please request of the members, though, before we continue, that we do try to keep our comments to Bill 107, please.

**Mr Agostino:** Absolutely.

**The Chair:** And brief.

**Mr Agostino:** I think it's important that members of the committee give this some serious consideration in view of the large number of municipalities that are impacted. I think it's important for the committee members and for the record as well to be aware of those municipalities that are impacted, because it's significant and it stretches right across this province.

We have the village of Ailsa Craig. Of course it affects the Ailsa Craig waste water treatment plant and collection system, the Ailsa Craig water distribution system and the Lake Huron water supply system. All of those facilities would be affected by this bill.

From the township of Aldborough, we have the Rodney waste water treatment plant. That's another facility that can be affected and possibly privatized if this bill goes through.

From the town of Alexandria, we have the Alexandria waste water lagoon and collection system, which could be impacted very negatively by this bill if this committee passes it in the form it's in right now.

We have the township of Alfred. The Alfred-Lefaivre water treatment plant and distribution system would be impacted by this bill.

We have the village of Alfred and the Alfred waste water lagoon and collection system. The Alfred-Lefaivre water treatment plant and distribution system could be impacted if this bill goes through unamended. That could be up for sale on the auction block.

From the town of Almonte, we have the Almonte waste water treatment plant. That plant could be impacted very negatively by this legislation.

From the Amherstburg, Malden and Anderdon municipality, the Amherstburg water treatment plant and distribution system would be impacted, and the people of that community could be impacted negatively if this legislation goes through.

From the township of Anderdon, we have three facilities there: the Anderdon-Colchester North water distribution system; Edgewater Beach waste water lagoons and collection system; McGregor waste water lagoons and collection system. Those facilities could be impacted, and the people in those communities could be impacted very negatively with this legislation.

We have the village of Arkona. There you have the Arkona waste water treatment plant and collection system and the Arkona water well and distribution system, which would be impacted if this bill goes through unamended by this committee.

We have the village of Arthur. That impacts the Arthur waste water treatment plant, lagoon and collection system.

We have the township of Assiginack. That would affect the Assiginack waste water treatment lagoon and collection system as well as the Assiginack water treatment plant. I think that could have negative impacts in those communities if these facilities are sold to the private sector.

From the town of Aylmer, we have the Aylmer-Yarmouth water distribution system. We have the Elgin area water supply system and we have the Aylmer Public

Utilities Commission. Those three facilities could be impacted negatively with this legislation if it goes through unamended.

We have the village of Barry's Bay, which is impacted by this. The Barry's Bay waste water treatment plant and collection system and Barry's Bay water treatment plant and distribution system would be impacted by putting this through unamended. It could cause a great number of problems in that particular community.

From the township of Bayham, we have the Elgin area section 2 water distribution system and of course the Elgin area water supply system, which would be impacted.

Another municipality that is going to be affected by this is the township of Beardmore. The facility that will be affected by this legislation and this transfer would be the Beardmore waste water lagoon and collection system.

Then we go on to the town of Belle River, and Belle River-Maidstone waste water treatment plant and the Belle River waste water collection system would be affected by this change. The good folks in that area could be affected negatively if those facilities are sold to the private sector.

Then we can move to the city of Belleville. The Belleville waste water treatment plant is one of the facilities affected. It is being transferred and would have no protection whatsoever from sale to the private sector as a result of this bill going through unamended.

We have the village of Belmont, and the Belmont waste water lagoon and collection system would be impacted as a result of this legislation.

We have the township of Biddulph, and the Granton water system would be affected in that particular township.

We have the township of Black River-Matheson, and the Matheson waste water treatment plant and collection system would be impacted as a result of this.

We have then the township of Blandford and Blenheim, and there we'd impact the Plattsville waste water treatment plant, lagoon and collection system and the Plattsville water treatment plant.

Then from the township of Blenheim, we have the Blenheim area water treatment plant and distribution system, the Blenheim waste water treatment lagoons and the Blenheim water distribution system.

From the village of Blyth, we'd have Blyth waste water treatment plant and collection system.

**The Chair:** Excuse me, Mr Agostino. May I ask if it's your intention to read through the entire list alphabetically, or can you summarize that in any way for the committee?

**Mr Agostino:** I think it's important for the record that we outline the municipalities that are impacted and the ones that could be at risk as a result of this government's move.

**The Chair:** Are you going to restrict these in any way to your own riding or are these all across Ontario?

**Mr Agostino:** None in my riding are affected. That's just the rest of the province.

*Interjections.*

**The Chair:** Mr Agostino has the floor, please, colleagues.

**Mr Agostino:** From the village of Bobcaygeon, the Bobcaygeon water treatment plant and distribution system would be impacted.

From the town of Bosanquet, the East Lambton water distribution system, the Grand Bend and area water distribution system, the Lake Huron water supply system and the Lambton area water treatment plant would be impacted.

From the town of Bradford-West Gwillimbury, the Bradford waste water treatment plant would be impacted.

From the town of Bruce Mines, the Bruce Mines waste water treatment plant and collection system, as well as the Bruce Mines water treatment plant and distribution system would be impacted.

From the village of Brussels, the Brussels waste water treatment plant and collection system.

From the village of Burk's Falls, the Burk's Falls waste water treatment lagoon.

From the township of Caldwell, the Verner waste water treatment lagoon would be impacted by this legislation.

From the township of Caradoc, the Melbourne water treatment plant and distribution system as well as the Mount Brydges water treatment plant and distribution system.

From the town of Carleton Place, the Carleton Place waste water treatment plant would be impacted by this legislation.

From the village of Casselman, the Casselman waste water lagoon and collection system as well as the Casselman water treatment plant and distribution system.

From the village of Chalk River, the Chalk River waste water treatment system as well as the Chalk River water facility.

From the city of Chatham, it would impact the Kent county water supply system.

From the village of Chesterville, it would impact the Chesterville waste water treatment lagoon and collection system.

From the township of Clearview, it would impact the Stayner water treatment plant.

From the township of Colchester South, it would impact the Colchester south water distribution system and the Harrow-Colchester South water treatment plant and distribution system.

From the town of Collingwood, a wonderful community, it would impact Thornbury water treatment plant and distribution system.

From the township of Cosby, Mason and Martland, it would impact the Noëlville waste water treatment lagoon.

From the township of Delaware, it would impact the Delaware water well and distribution system.

From the town of Deseronto, it would impact the Deseronto waste water treatment plant and collection system, as well as the Deseronto water treatment plant and distribution system.

From the township of Dover, it would impact Mitchell's Bay water treatment plant and distribution system.

From the town of Dresden, it would impact the Dresden waste water treatment plant.

From the village of Dundalk, it would impact the Dundalk waste water treatment lagoons and collection system.



From the regional municipality of Durham, where a number of the members on the government side come from, there would be a number of plants that would be impacted. This would include the Beaverton waste water treatment plant, the Durham water treatment plant, the Brock water treatment plant, the Cannington waste water treatment plant, the Newcastle waste water treatment plant, the Newcastle water treatment plant, as well as the Pickering waste water treatment plant and the Port Perry waste water treatment plant. Of course, it would also impact the Whitby water treatment plant.

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From the village of Dutton, it would impact the Dutton waste water treatment plant and collection system.

From the township of Dysart, it would impact the Dysart waste water treatment plant.

From the township of East Luther-Grand Valley, this legislation would affect the Grand Valley waste water treatment plant and collection system.

From the township of East Williams, this legislation would impact the Ailsa Craig water distribution system, the Lake Huron water supply system and the Naim water distribution system. All three facilities could have a difficult time coping if these facilities were sold to the private sector.

From the township of Edwardsburgh, the sewage and water treatment facilities in that particular township would be subject to ownership by the private sector.

From the town of Elgin, the Elgin-Middlesex water distribution system would be impacted and, in my view, very negatively as a result of changes to this legislation.

In the village of Elora, the Elora waste water treatment plant could be on the selling block as a result of this government ramming this legislation through.

The township of Emo, there would be two facilities in that one; the Emo waste water treatment lagoon and collection system would be affected, as well as the Emo water treatment and plant distribution system.

From the town of Enlehart, the Enlehart waste water treatment lagoon would be impacted as a result of this legislation.

From the township of Enniskillen, the oil city lagoons would be affected by this legislation.

In the great township of Eramosa, there would be two facilities; the township of Eramosa (Rockwood) waste water treatment plant and the township of Eramosa (Rockwood) water treatment plant.

From the village of Erie Beach, we would have Erieau-Erie Beach water treatment plant and distribution system.

From the village of Erieau, we'd have the Erieau-Erie Beach water treatment plant and distribution system.

From the township of Ernestown, we would have the Ernestown-Odessa waste water treatment plant and collection system and the Ernestown-Odessa water treatment plant and distribution system.

**Mr John R. Baird (Nepean):** On a point of order, Madam Chair: I would just call your attention to standing order 23, "In debate, a member shall be called to order... if he or she...."

"(c) Persists in needless repetition...."

I think reading every —

**Mr Laughren:** We went through this in the House.

**Mr Baird:** We went through it in the House, and that was with respect to amendments, not debate. I think there's a prima facie case here that it's needless repetition with the intent of offending the parliamentary practices and that they should be called to order under standing order 23(c).

**Mr Agostino:** Madam Chair, may I suggest that each one of these names is different; each one affects a different municipality. If I read the same one over and over, I suggest that would be repetition, but they're all different, they're all different parts of this province and they're all different facilities, so I don't think the repetition argument would hold any water here.

**Mr Rollins:** That isn't your decision; it's the Chair's.

**The Chair:** I do not believe these are repetitions. I would encourage you, though, if possible, to summarize the point you're trying to get across. There are a number of amendments, Liberal, NDP and government, that should be addressed in this committee. It would serve the interests of the committee to get to all of those amendments and discussion thereof as soon as possible, please.

**Mr Agostino:** As I said earlier, I think it's important for the record that each one of these be on the record because they're all affected by this. They all potentially could be sold off to the highest bidder as a result of the legislation that is being put through this committee, and so I think it's important for this to be read into the record and that people are aware that their own municipality may be at risk here. So I'll just continue.

**Mrs Fisher:** Madam Chair, I would ask if we could get some type of ruling on whether or not the member, if he would agree, and I'm sure most other members will agree as well, could present this as an item for print in the Hansard. We have had on occasion members make presentation who didn't have available that day of discussion something they would have liked entered in the minutes. I wonder whether or not it's suitable. If the member would agree, we'd be glad to look at the full list, and it could be all recorded in terms of something entered before this hearing process.

**The Chair:** The member raises an interesting question. Would you consider submitting this to members of the committee as evidence, a printed listing as an exhibit?

**Mr Agostino:** Again, I think it's important for these to be read into the record.

**Mrs Fisher:** As a supplementary to that question, then, my question is, as an exhibit, would it not be printed into the record anyway?

**The Chair:** No, I don't believe exhibits are printed into the record.

**Mrs Fisher:** Is there such a thing that we could request that it be printed into the record?

**The Chair:** The clerk indicates no, that's not possible.

**Mr Agostino:** The next municipality that's impacted by this is the township of Essa, and this would impact the Angus waste water treatment plant and collection system in this township.

The next one is the Essex Public Utilities Commission, and the facilities impacted and affected and transferred as a result of this legislation would be the Essex waste water treatment lagoons, the Union water distribution

system (east) and the Union water treatment plant and distribution system.

From the town of Essex, it would be the Essex waste water treatment lagoons that would be impacted by this legislation.

From the town of Exeter, it would be the Exeter-Stephen secondary trunk watermain.

From the township of Fauquier-Strickland, it would be the pipe crossing agreement.

From the village of Fenelon Falls, it would be the Fenelon Falls waste water treatment plant and collection system and Fenelon Falls waste water treatment plant and distribution system.

From the village of Finch, it would impact the Finch water well and distribution system.

From the village of Flesherton, it would impact the Flesherton waste water treatment plant and collection system.

From the village of Frankford, it would impact the Frankford waste water treatment plant and collection system and the Frankford water well and distribution system.

From the township of Front of Leeds and Lansdowne, it would impact the Leeds and Lansdowne waste water lagoon and collection system and the Leeds and Lansdowne water well and distribution system.

From the town of Georgina, it would impact the Georgina-Keswick waste water treatment plant.

From the town of Geraldton, it would impact the Geraldton waste water treatment plant and collection system.

From the village of Glencoe, it would impact the Glencoe waste water lagoon and collection system and the Glencoe waste water treatment plant.

From the township of Gosfield North, it would impact the Cottam waste water treatment lagoon, the Union water distribution system (east) and the Union water treatment plant and distribution system.

From the township of Gosfield South, it would impact the Union water distribution system (east) and the Union water treatment plant and distribution system.

From Goulbourne township, it would impact the Glencoe waste water treatment plant.

From Grand Bend Public Utilities, it would impact the Grand Bend and area water distribution system and the Lake Huron water supply system.

From the village of Grand Bend, it would impact the Grand Bend waste water collection system and the Grand Bend waste water treatment lagoons.

From the town of Haileybury, it would impact Haileybury-North Cobalt waste water collection system and the Haileybury waste water treatment plant, as well as the Haileybury water treatment plant and distribution system.

From the township of Haldimand-Norfolk, it would impact the Cayuga waste water treatment plant and collection system, the Haldimand-Norfolk water treatment plant and distribution system and the Nanticoke backwash lagoon, the Port Dover waste water treatment plant, the Port Rowan water treatment lagoon and collection system and the Simcoe waste water treatment plant as well as the Waterford waste water treatment lagoon.

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From the regional municipality of Hamilton-Wentworth, it would impact the Ancaster waste water treatment plant, the Hamilton-Wentworth waste water treatment plant and the Saltfleet waste water treatment plant.

From the town of Harrow, it would impact Harrow-Colchester South water treatment plant and distribution system and the Harrow waste water lagoons and collection system.

From the township of Harwich, it would impact the Blenheim area water treatment plant and distribution system, the Blenheim water distribution system, the Erieau-Erie Beach water treatment plant and distribution system and the Shrewsbury water distribution system.

From the village of Hastings, it would impact the Hastings water treatment plant and collection system.

From the village of Havelock, it would impact the Havelock water treatment plant and collection system.

From the town of Hawkesbury, it would impact the Hawkesbury water treatment plant and collection system.

**Mr Baird:** On a point of order, Madam Chair: Section 24(a) of the standing orders states, "Except where otherwise expressly provided by the standing orders...no member shall speak for more than 30 minutes." I believe those 30 minutes have expired.

**Mr Agostino:** No, not yet.

**The Chair:** I'm informed by the clerk that applies only in the House and not in committee.

**Mr Baird:** Are the standing orders not applying in the committee as well?

**The Chair:** That particular one applies only in the House.

**Mr Galt:** Madam Chair, in all due respect, maybe the Chair should be challenged for an opinion.

**The Chair:** That means the ruling would go to the House.

**Mr Galt:** Okay, forget it, then. I didn't realize it would have to go to the House to get a ruling on that.

**The Chair:** Mr Agostino, I think there are a number of committee members who would like to move on to other amendments that are being presented to the committee. I ask you to consider that as you read your —

**Mr Baird:** Madam Chair, this is legislative tomfoolery.

**The Chair:** Continue.

**Mr Agostino:** From the town of Hawkesbury, it would be the Hawkesbury waste water treatment plant and collection system.

From the township of Hay, it would be the Lake Huron water supply system.

From the town of Hearst, it would be the Hearst waste water treatment lagoon and the Hearst water treatment plant.

From the village of Hensall, it would be the Hensall waste water lagoon and collection system.

From the township of Himsforth North, it would be the Callander waste water treatment lagoon and the Callander water treatment plant.

From the township of Hornepayne, it would be the Hornepayne waste water treatment plant and collection system and the Hornepayne water treatment plant and distribution system.



From Ingersoll Public Utilities, it would impact the Ingersoll waste water treatment plant.

From the town of Innisfil, it would impact the Cookstown water treatment plant.

From the town of Iroquois Falls, it would impact the Iroquois Falls waste water treatment plant.

From the town of Kapuskasing, it would impact the Kapuskasing waste water treatment plant and collection system.

From the district of Kenora, it would impact the Kenora waste water treatment plant.

From the village of Killaloe, it would impact the Killaloe waste water treatment plant and collection system.

From the town of Kingsville, it would impact the Union water distribution system east and the Union water treatment plant and distribution system.

From the town of Kirkland Lake, it would impact the Kirkland Lake waste water treatment plant.

From the village of L'Orignal, it would impact the L'Orignal waste water treatment plant and collection system and the L'Orignal water well and distribution system.

From the village of Lakefield, it would impact the Lakefield waste water treatment plant.

From the village of Lancaster, it would impact the Lancaster waste water treatment lagoon and the Lancaster water well and distribution system.

From the town of LaSalle, it would impact the LaSalle waste water collection system.

From the town of Latchford, it would impact the Latchford waste water treatment plant and collection system and the Latchford water treatment plant and distribution system.

From the town of Leamington, it would impact the union water distribution system east and the union water treatment plant and distribution system.

From the town of Listowel, it would impact the Listowel water treatment facility.

From the city of London, it would impact the Elgin-Middlesex water distribution system and the Lake Huron water supply system.

From the township of London, it would impact the Ilberton water distribution system and the Lake Huron water supply system.

From the town of Longlac, it would impact the Longlac waste water treatment plant and collection system.

From the village of Lucan, it would impact the sewage systems in that village.

From the village of Madoc, it would impact the Madoc waste water treatment lagoon.

From the township of Maidstone, it would impact the Belle River-Maidstone waste water treatment plant, the Maidstone waste water collection system, the Sandwich South-Maidstone water distribution system, the union water distribution system east and the union water treatment plant and distribution system.

From the township of Malahide, it would impact the Aylmer-Yarmouth water distribution system, the Elgin area secondary number 2 water distribution system, as well as the Elgin area water supply system.

From the township of Malden, it would impact the Malden water distribution system.

From the district of Manitoulin, it would impact the Billings water treatment plant.

From the village of Markdale, it would impact the Markdale water well and distribution system.

From the village of Marmora, it would impact the Marmora waste water treatment plant and collection system.

From the township of McGillivray, it would impact the Ailsa Craig water distribution system, the Lake Huron water supply system and the Parkhill water distribution system.

From the township of Meaford, it would impact the Meaford waste water treatment plant.

From the town of Mersea, it would impact the union water distribution system east and the union water treatment plant and distribution system.

From the village of Merrickville, it would impact the sewage and water facilities.

From the village of Mildmay, it would impact the Mildmay water treatment plant.

From the village of Millbrook, it would impact the Millbrook waste water treatment plant and collection system, as well as the Millbrook water well and distribution system.

From the village of Milverton, it would impact the Milverton waste water treatment lagoons.

From the township of Moore, it would impact the Brigden waste water treatment lagoons, the Brigden water distribution system, the Courtright waste water treatment plant, as well as the Lambton area water treatment plant.

From the district municipality of Muskoka, it would impact the Huntsville waste water treatment plant.

From the township of Nakina, it would impact the Nakina waste water treatment plant and collection system, as well as the Nakina water well and distribution system.

From the village of Neustadt, it would impact the Neustadt waste water lagoons and collection system.

From the regional municipality of Niagara, it would impact the East Bertie waste water treatment plant, the Fort Erie waste water treatment plant, the Niagara-Fort Erie water treatment plant, the Niagara-Grimsby waste water treatment plant, the Niagara-Port Dalhousie waste water treatment plant, the Niagara-Port Weller waste water treatment plant, the Niagara waste water treatment plant, the Niagara water treatment plant, as well as the Thorold waste water treatment plant.

From the great city of North Bay, it would impact the North Bay waste water treatment plant.

From the township of North Dumfries, it would impact the Ayr water distribution system.

From the township of Norwich, it would impact the Norwich waste water lagoons and collection system.

From the village of Norwood, it would impact the Norwood waste water treatment plant and collection system.

From the village of Oil Springs, it would impact the Oil Springs waste water lagoon.

From the village of Omamee, it would impact the Omamee waste water treatment plant and collection system.

From the town of Orangeville, it would impact the Orangeville waste water treatment plant.

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From the village of Paisley, it would impact the Paisley waste water treatment plant and collection system.

From the Parkhill Public Utilities Commission, it would impact the Lake Huron water supply system, as well as the Parkhill water distribution system.

From the town of Parkhill, it would impact the Lake Huron water supply system, the Parkhill waste water lagoon and collection system, as well as the Parkhill water distribution system.

From the regional municipality of Peel, it would impact the Clarkson waste water treatment plant, the Lakeview waste water treatment plant, biosolids, the Lakeview waste water treatment plant, conventional, the Lakeview-Lorne Park water treatment plant, as well as the Bolton water treatment plant.

From the village of Petawawa, it would impact the Petawawa waste water collection system.

From the city of Peterborough, it would impact the Peterborough waste water treatment plant.

From the township of Pittsburgh, it would impact the Pittsburgh water treatment plant.

From the village of Plantagenet, it would impact the Plantagenet waste water treatment lagoon and collection system and the Plantagenet water treatment plant and distribution system —

**Mr Galt:** Could you repeat that last one? I didn't quite get it. I didn't understand that last one.

**Mr O'Toole:** He's going too fast. He's going way too fast.

**Mr Agostino:** What I'll do is I'll spell it to make it easier as well. I'll repeat it and then spell it. If the members like, I can spell each one as we go along as well, after I pronounce it. If it makes it easier to understand, I'd be happy to do that.

**The Chair:** Colleagues, I think Mr Agostino has the floor and it might help him if the room was a little quieter.

**Mr Agostino:** But if it's the request of the committee, I'd be happy to spell each name, if it makes it easier.

**The Chair:** No. I think if you can read them, that would be fine.

**Mr Agostino:** That would be okay? Thank you.

From the township of Plympton, the East Lambton water distribution system and the Lambton area water treatment plant.

From the village of Point Edward, the Lambton area water treatment plant.

From the village of Port Burwell, the Elgin area section 2 water distribution system and the Elgin area water supply system.

From the village of Port Stanley, the Port Stanley waste water lagoons and collection system.

From the separated town of Prescott, the Prescott waste water treatment plant.

From the great town of Rainy River, the sewage and water treatment facilities.

From the town of Raleigh, the Blenheim area water treatment plant and distribution system, the Blenheim water distribution system, the Erieau-Erie Beach et al water treatment plant distribution system and the Merlin waste water lagoons and collection system.

From the town of Ramara, the Ramara water treatment plant and distribution system.

From the township of Ratter and Dunnet, the Warren waste water treatment lagoon.

From the township of Red Lake, the Red Lake waste water treatment plant and collection system, as well as the Red Lake water treatment plant.

From the town of Ridgetown, the Ridgetown waste water treatment lagoons.

From the township of Rochester, the union water distribution system east and the union water treatment plant and distribution system.

From the town of Rockland, the Rockland waste water treatment lagoon and collection system, as well as the Rockland water treatment plant and distribution system.

From the township of Romney, the Wheatley waste water treatment plant and collection system.

From the township of Sandwich South, the Sandwich South-Maidstone water distribution system and the Tecumseh-St Clair-Sandwich South waste water pumping station.

From the city of Sarnia, the Lambton area water treatment plant.

From the township of Schreiber, the Schreiber waste water treatment plant.

From the town of Seaforth, the Seaforth waste water treatment lagoons.

From the township of Severn, the Coldwater waste water treatment plant and collection system.

From the township of Smith, the Smith waste water treatment plant and collection system, as well as the Smith water distribution system.

From the town of Smooth Rock Falls, the Smooth Rock Falls waste water treatment plant and collection system.

From the township of Sombra, the Lambton area water treatment plant, as well as the Sombra waste water treatment lagoons and the Sombra water distribution system, standpipe.

From the township of South Dumfries, the St George waste water treatment plant and collection system.

From the town of Southampton, the Southampton waste water treatment plant and collection system.

From the township of Southwold, the Elgin area water supply system.

From the township of Stanley, the Lake Huron water supply system.

From the township of Stephen, the Dashwood water distribution system, the Grand Bend and area water distribution system, the Grand Bend waste water treatment lagoons, and the Lake Huron water supply system.

From the village of Stirling, the Stirling waste water treatment plant.

From the city of Stratford, the Stratford waste water treatment plant.

From the village of St Clair Beach, the St Clair Beach waste water collection system, as well as the Tecumseh-St Clair-Sandwich South waste water pumping station.

From the village of St Isidore, the St Isidore de Prescott waste water treatment lagoon and collection system.



From the separated town of St Marys, the St Marys waste water treatment plant and collection system, as well as the St Marys waste water collection system.

From the city of St Thomas, the Elgin area water supply system.

From the regional municipality of Sudbury, the Sudbury waste water treatment plant.

**Mr Laughren:** Oh, no.

**Mr Agostino:** That's gone.

From the village of Sundridge, the Sundridge waste water treatment lagoon.

From the village of Tara, the Tara waste water treatment lagoons.

From the township of Tay, the Port McNicoll waste water treatment plant and collection system, the Port McNicoll-Tay water distribution system, the Victoria Harbour waste water treatment plant and collection system, and the Victoria Harbour water treatment plant and distribution system.

From the town of Tecumseh, the Tecumseh waste water collection system, as well as the Tecumseh-St Clair-Sandwich South waste water pumping station.

From the township of Temagami, the Temagami South waste water treatment lagoon.

From the village of Thedford, the Lake Huron water supply system, the Parkhill water distribution system, as well as the Thedford waste water treatment lagoon.

From the town of Thessalon, the Thessalon waste water treatment lagoon.

From the town of Thornbury, the Thornbury waste water treatment plant and collection system, as well as the Thornbury water treatment plant and distribution system.

From the township of Tilbury East, the Merlin waste water lagoons and collection system.

From the township of Tilbury North, the Comber water pumping station, as well as the Stoney Point waste water collection system.

From the township of Tilbury West, the Comber water pumping station and the Tilbury West (Comber) waste water collection system.

From the town of Tillsonburg, the Tillsonburg waste water treatment plant.

From the town of Vankleek Hill, the Vankleek Hill waste water treatment lagoon, as well as the Vankleek Hill water well and distribution system.

From the village of Vienna, the Elgin area section number 2 water distribution system, the Elgin area water supply system, as well as the Vienna water distribution system.

From the town of Wallaceburg, the Wallaceburg waste water treatment plant and collection system.

From the township of Warwick, the East Lambton water distribution system and the Lambton area water treatment plant.

From the town of Wasaga Beach, the Wasaga Beach waste water treatment plant, as well as the Wasaga Beach water treatment plant.

From the regional municipality of Waterloo, the Ayr waste water collection system, the Ayr waste water treatment plant, the Baden waste water treatment plant, the Galt waste water treatment plant, the Hespeler waste

water treatment plant, the Kitchener waste water treatment plant, the Preston waste water treatment plant, the St Jacob's waste water treatment plant, the Waterloo waste water treatment plant, the Wellesley waste water treatment plant.

From the village of Watford, the East Lambton water distribution system, the Lambton area water treatment plant, as well as the Watford waste water treatment lagoons.

From the town of Webbwood, the Webbwood waste water treatment lagoon.

From the village of West Lorne, the West Lorne waste water treatment lagoons and collection system.

From the township of West Williams, the Lake Huron water supply system and the Parkhill water distribution system.

From the village of Westport, the Westport waste water lagoon and collection system, as well as the Westport water well and distribution system.

From the village of Wheatley, the Wheatley waste water treatment plant and collection system.

From the town of Warton, the municipally owned facility.

From the township of Wilmot, the Baden waste water treatment plant, as well as the Wilmot waste water treatment plant.

From the village of Winchester, the Winchester waste water lagoon and collection system.

From the village of Woodville, the Woodville water treatment plant.

From the village of Wyoming, the East Lambton water distribution system, as well as the Lambton area water treatment plant.

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From the township of Yarmouth, the Aylmer-Yarmouth water distribution system, the Elgin area section 2 water distribution system, the Elgin area water supply system.

From the regional municipality of York, the Georgina-Keswick waste water treatment plant and the King water treatment plant.

From the regional municipalities of York and Durham, the York-Durham waste water treatment plant.

From the village of Zurich, the Zurich waste water treatment lagoons and collection system.

Madam Chair, the reason I read those into the record is because I think it's important for the public. As we go through this and in years to come they'll very clearly understand what is happening here, the municipalities that are going to be impacted by this change as a result of Bill 107 and the transfer. There are also hundreds and hundreds of other facilities that are now municipally owned that also will be impacted by this bill from the point of view of the new powers that this and Bill 26 and other government legislation have given municipalities to be able to sell these assets, these very valuable assets that the public has come to rely upon to ensure that there's safe, clean, affordable drinking water. All these things are in jeopardy as a result of the legislation that has been introduced in front of us today.

**Mr Laughren:** I think Mr Agostino has done us all a favour. I'd like to thank the engineers in the Ministry of Environment who provided me with a list of all the

communities not affected by this legislation, and I wonder whether you wanted those read into the record as well.

**The Chair:** Mr Laughren, do you really think that's necessary?

**Mr Laughren:** No, I wouldn't do that, but I did want to just make my final comment on this particular amendment. I think you do get the sense that the opposition cares about this bill and this particular aspect of the bill.

*Interjection.*

**Mr Laughren:** Well, I'm serious. The cameras aren't on us, the galleries aren't packed with people. This is something that bothers us a lot. It's not just one of the opposition parties; it's both. So my final point is that I really do wish that the ministry had come forward with a better rationale for not accepting this amendment and for allowing and basically encouraging the municipalities to privatize when the screws get tightened on them.

I just wanted to express my disappointment in the way in which the parliamentary assistant has ignored what I think are legitimate requests of the two opposition parties, who took their task seriously with this committee, travelled with the committee, didn't play any kind of procedural games on the committee as we went to London, and held the hearings here in Toronto. It was a very straightforward thing. I'm disappointed that we weren't treated in kind in return. I would have thought this was a more legitimate process as we tried to make amendments that in our view would improve the bill. If at the end of the day the parliamentary assistant had come forward with overwhelming evidence that in other jurisdictions this turned out to be to the benefit of the community, then perhaps we could have been persuaded that this was the case.

My own government was not opposed to public-private arrangements. Look at Highway 407, for example. Traditionally, highways were built by the public sector in this province. We pioneered, quite frankly, the building of that highway and the maintenance and the operation of it by the private sector, and arranged the financing for it and everything. So I don't come to the debate on this bill with blinkers on because it happens to be public sector and private sector. It's because I have seen no evidence that allowing municipalities or squeezing them to the point where they'll have to privatize their sewer and water services is in the best interests of those communities or of the people at large in this province.

I did want to make sure that you, Madam Chair, understood, and I think you do, that the opposition cares very much about this bill and is genuinely concerned about the direction in which the government is taking us in terms of public policy.

For those reasons these amendments were brought forward and we have prolonged the debate this afternoon. Perhaps it got the attention of the ministry people and the parliamentary assistant and the government members, because I really think, even though reading off the list may to a casual observer seem a trivial exercise, it was a way in which to drive home the fact that we feel very strongly about this bill and this particular aspect of the bill. I'll leave that with you and just simply close my remarks now.

**Mr Agostino:** Just further on the point made by the previous speaker, Mr Laughren, I think it's important to again clarify the fact that there are some private-public partnerships that do work, and this is not what we're talking about in this particular bill. I think all of us, regardless of what side of this issue we stand on, acknowledge the fact that there are cases where there's a role for the private sector to play in government facilities. The days of government running everything of course are gone; we know that.

There's also an extreme at the other end. There are partnerships in this field that work, but that does not include ownership. That's the critical element to all of this: It is ownership and control of rights. That is really what matters to the public: Who owns these facilities and as a result of owning these facilities, who controls water rates?

In my own municipality, we have an example that, by most observers, works, but that is not ownership. That is a private company which comes in, makes an agreement with the municipality, insures a number of things for the municipality. First of all, the ownership is fully, totally retained by the municipality. Second, the ability to set the water and sewer rates is totally and fully retained by the municipality.

If this bill had that sort of provision in it, I would not have a problem with it. If this bill had an amendment or a provision in it that said that municipalities will continue to own the facilities, they cannot sell them to the private sector, and that municipalities continue to be the ones who control the water and sewer rates, then I don't have any major problem with that.

In my community the company came in, collective agreements were protected, successor rights for the workers were there, contracts were honoured, negotiations that had been agreed to were followed through. So the protections were there for the workers. They weren't thrown out and a whole bunch of new employees weren't brought in at minimum wage the next day. Their contracts and their bargaining rights were protected and, most importantly, the ability to set the rates for water and sewer where protected.

That is really what is critical here. It is not an issue of simply the opposition trying to stall government legislation here. I think, all politics aside, all of us deep in our hearts believe that power and that ability for an essential service such as water and sewer cannot simply be turned over to the private sector. It is too vital. It is too important.

People can pick and choose certain services. They can do without certain services. No one in the public, no one in this room, no one in this province can do without essential water services. Why would we even risk — and some members might argue it's a small risk, it's minimal — that opportunity, to give up control and, by giving up that control of those services, give up the ability to control access to those services?

Nobody today anywhere in this province goes without water services because they can't afford to pay; no one in any corner of this province, regardless of income. The risk that would occur, as it has occurred in Great Britain — and no one can tell us why it wouldn't happen



here — if you give up control, if under this legislation municipalities can now sell the assets, what protects the consumer from the rates? What stops that private company from being able to go in and, based on the bottom line and profit margin, charge whatever rates they want for that water? What would stop that? Nothing in this legislation.

**Mr Baird:** Nothing stops it now.

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**Mr Agostino:** Maybe somebody on the government side of the House can tell me what protection the consumer would have or the senior citizen on a fixed income or the single mum with a couple of kids if a municipality, because they're cash strapped, would turn around and sell a facility and sell that ability to set the rates to the private sector?

What protection would you offer through this legislation to those consumers? Absolutely none. Not one iota, not one protection in this legislation, and that is absolutely critical here. I just cannot understand. No one on the government side has said to me yet why it's a good idea for municipalities to sell these services and to lose control of that. No one can argue that. But if that's the case and it's not a problem, then why would you not agree to simply put that in legislation? I would sit here and praise your bill and say it's a great bill and go through with it.

**Mr Baird:** Ask the question and you'll see.

**Mr Agostino:** We have seen very clearly here a reluctance to do that. I urge the government members again to do what is right. I will praise this government if they do that. It is the right thing to do and I would urge you to do it. You have the majority and you have the control and you can determine where this is going to go. You can do the right thing today and protect the consumers and ensure that we do not turn over water and sewer services and setting those rates to the private sector.

**The Chair:** Further discussion? Seeing none, I'll put the question. Shall the amendment carry? All those in favour? Opposed? The amendment is lost.

**Mr Agostino:** What was the vote on that, Madam Chair, may I ask?

**The Chair:** Sorry, it wasn't a recorded vote.

**Mr Agostino:** From the voice vote, you believe it was carried?

**The Chair:** No, we had show of hands.

**Mr Agostino:** I didn't see all the hands up, and I wasn't sure what the margin was.

**The Chair:** I did, and the motion was lost.

**Mr Agostino:** And every single member on that side raised their hand?

**The Chair:** We'll move now to the next amendment, which I believe is an alternate Liberal amendment. Is that correct, Mr Agostino?

**Mr Agostino:** I move that subsection —

**Mr Baird:** Dispense.

**The Chair:** No, it has to be read into Hansard.

**Mr Baird:** Just trying to help you, Dom.

**Mr Agostino:** Yes, thank you.

I move that subsections 56.2(1) and (2) of the Capital Investment Plan Act, 1993, as set out in subsection 2(2) of the bill be struck out and the following substituted:

"Conditions for transfer of waterworks

"(1) A municipality shall not transfer the ownership of all or part of a waterworks to another person unless,

"(a) the municipality has repaid to the crown,

"(i) all payments that were made by the crown on or after April 1, 1978 for the purpose of subsidizing the capital costs of the transferred works, and

"(ii) all payments that were made by the crown on or after April 1, 1978 for the purpose of subsidizing the capital cost of other waterworks that have been used to provide water service to a municipality; and

"(b) the municipality has passed a bylaw setting out the terms of the transfer and the municipal electors have given their assent to the bylaw in accordance with the Municipal Act.

"Conditions of transfer of sewage works

"(2) A municipality shall not transfer the ownership of all or part of a sewage works to another person unless,

"(a) the municipality has repaid to the crown,

"(i) all payments that were made by the crown on or after April 1, 1978 for the purpose of subsidizing the capital costs for the transferred works, and

"(ii) all payments that were made by the crown on or after April 1, for the purpose of subsidizing the capital cost of other sewage works that have been used to provide sewage service to a municipality; and

"(b) the municipality has passed a bylaw setting out the terms of the transfer and the municipal electors have given their assent to the bylaw in accordance with the Municipal Act."

**The Chair:** Excuse me. Just for the record, "after April 1," should also read "1978."

**Mr Agostino:** Thank you. The intent of this amendment, and the reason it's an alternate amendment — obviously, had the government members supported the previous amendment, which they refused to do and in effect opened up the door now to the private sector owning and controlling the facilities and basically setting the sewer and water rates, what in effect this amendment would do is at least do something that government members have always been the great advocates of, and that is referendums.

The Common Sense Revolution makes reference a number of times to the value of referendums and how important they are in determining the future of various pieces of government legislation. If you believe that municipalities have that right, as you do now, to sell those assets, and you've done that already by defeating the previous amendment, then at least allow the public some protection and some direct say.

This is not an issue of privatization where people can take it or leave it. Many of us in this room may oppose the privatization of the LCBO. Privatizing the LCBO, as wrong as it may be, is not an issue of essential service. People can be serviced one way or another, can be happy or unhappy about the LCBO being either in the control that it is now or in the private sector. It's not an essential life and death type of service. We're not talking about privatizing a park here. We're not talking about privatizing Niagara Falls or our park system in this province or privatizing roads or privatizing the LCBO. What we're talking about here is privatizing water, the most essential

service that government can provide to any of us across this province. Therefore, very clearly we believe that if you're going to take that step and leave that door open to municipalities, the least you can do is afford the taxpayers of that municipality the right to be able to vote on that particular item through a referendum before a municipality sells it.

If municipality X went out tomorrow and put a tender out for their facility and the water and sewer plant, before that went out, before that tender had been approved, the electors in that municipality would have the right to say, "Yes, we want our water and sewer services privatized," or "No, we do not want that to happen." In Bill 26, that was allowed. Before Bill 26, that would have been the route that would have been taken and that is the substantial difference.

The members say they've had this power for years. Yes, that's been there for years but there was some protection in past years. That protection is not there and that protection can only be given now, as a result of your previous vote, to the taxpayers of that municipality by allowing those people to have a say through a referendum that would be forced upon that council, whether they wanted to or not, which now this does not allow. The way the legislation is now, there's nothing that forces municipalities at all, that compels municipalities at all, to go that route if they were going to sell the service.

I think it's just absolutely unthinkable, unconscionable and amoral that a municipality would proceed in such a fashion, without ensuring that there was a mechanism that the people whose vital services you are now impacting — you talk about impact on people when it comes to taxes and you like referendums on taxes. You ran a campaign on that. You went through that whole route. If

that is important to you, the selling and the privatization of water must be just as important to you as taxes.

You cannot tell me, when it comes to impact on people's lives, that the impact privatization of such a service would have is not at least equivalent to the impact an increase in taxes would have. You're willing to go to referendums on tax increases, you're willing to go to referendums on balanced budgets and all those kinds of things you talked about in the revolution, but you're not willing to do it for water and sewer services, for the most essential service that government can provide its citizens and has a responsibility to provide its citizens.

**Mr Galt:** In response to this particular amendment, certainly we believe this amendment is unnecessary. The grant repayment provision of Bill 107 is sufficient to protect public investment in water and sewage infrastructure.

Municipal councils have been in the past and will continue to be accountable to ratepayers for decisions regarding the provision of water and sewage works. I think municipal councils have been very accountable, very responsible to the people. Municipal councils are the closest level of government to the public, to the people they serve. They are responsive. They have all kinds of delegations coming to them expressing their concerns. I, for one, have a lot of faith, having been involved both in township council as well as county council, that they will do what is right for the citizens. To say otherwise is an insult to the many councils that we have across this province. I cannot support this particular motion.

**The Chair:** It being 6 of the clock, colleagues, I think it best the committee stands recessed until Monday, May 5, following standing orders.

*The committee adjourned at 1800.*









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### STANDING COMMITTEE ON RESOURCES DEVELOPMENT

**Chair / Présidente:** Mrs Brenda Elliott (Guelph PC)  
**Vice-Chair / Vice-Président:** Mr Jerry J. Ouellette (Oshawa PC)

Mr Dominic Agostino (Hamilton East / -Est L)  
Mr David Christopherson (Hamilton Centre / -Centre ND)  
Mr Ted Chudleigh (Halton North / -Nord PC)  
Ms Marilyn Churley (Riverdale ND)  
Mr Sean G. Conway (Renfrew N / -Nord L)  
Mrs Brenda Elliott (Guelph PC)  
Mr Doug Galt (Northumberland PC)  
Mr John Hastings (Etobicoke-Rexdale PC)  
Mr Pat Hoy (Essex-Kent L)  
Mr W. Leo Jordan (Lanark-Renfrew PC)  
Mr Bart Maves (Niagara Falls PC)  
Mr John R. O'Toole (Durham East / -Est PC)  
Mr Jerry J. Ouellette (Oshawa PC)  
Mr Joseph Spina (Brampton North -Nord PC)

#### **Substitutions present / Membres remplaçants présents:**

Mr Toby Barrett (Norfolk PC)  
Mr Dave Boushy (Sarnia PC)  
Mrs Barbara Fisher (Bruce PC)  
Mr Floyd Laughren (Nickel Belt ND)

#### **Also taking part / Autres participants et participantes:**

Mr Rosario Marchese (Fort York ND)

**Clerk / Greffière:** Ms Donna Bryce

**Staff / Personnel:** Mr Michael Wood, legislative counsel

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## Legislative Assembly of Ontario

First Session, 36th Parliament

## Assemblée législative de l'Ontario

Première session, 36<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 5 May 1997

# Journal des débats (Hansard)

Lundi 5 mai 1997

**Standing committee on  
resources development**

**Comité permanent du  
développement des ressources**

**Water and Sewage Services  
Improvement Act, 1997**

**Loi de 1997 sur l'amélioration  
des services d'eau et d'égout**



Chair: Brenda Elliott  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
RESOURCES DEVELOPMENT

Monday 5 May 1997

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU  
DÉVELOPPEMENT DES RESSOURCES

Lundi 5 mai 1997

*The committee met at 1534 in committee room 1.*WATER AND SEWAGE SERVICES  
IMPROVEMENT ACT, 1997LOI DE 1997 SUR L'AMÉLIORATION  
DES SERVICES D'EAU ET D'ÉGOUT

Consideration of Bill 107, An Act to enact the Municipal Water and Sewage Transfer Act, 1997 and to amend other acts with respect to water and sewage / Projet de loi 107, Loi visant à édicter la Loi de 1997 sur le transfert des installations d'eau et d'égout aux municipalités et modifiant d'autres lois en ce qui a trait à l'eau et aux eaux d'égout.

**The Chair (Mrs Brenda Elliott):** Colleagues, good afternoon. We resume today clause-by-clause consideration of Bill 107. When last we met we were on page 4 of the proposed amendments, subsection 2(2) of the bill, subsections 56.2(1) and 56.2(2) of the Capital Investment Plan Act. This amendment had been read into the record by Mr Agostino, and Mr Laughren was about to make comment.

**Mr Floyd Laughren (Nickel Belt):** The thrust of this would be, in words that only legal pointy heads can dream up to say something simple, to require that there be a referendum in the community before the facility is sold. Of course, they don't quite say that; they say that a municipality shall not transfer a waterworks to another person unless the municipality has passed a bylaw setting out the terms of the transfer and the municipal electors have given their assent to the bylaw in accordance with the Municipal Act, which is, I would think, the same as saying you have to have a referendum before you do that. Of course, that would be too simple for the legal pointy heads to put on paper.

The second part of it deals with the transfer of sewage works. The first half is the water works and the second part is the sewage works.

I support this Liberal amendment moved by Mr Agostino. I don't know why he's doing such a favour for the government members, but he's trying, I think — I don't want to put words in his mouth —

**Mr Dominic Agostino (Hamilton East):** I'm a charitable person.

**Mr Laughren:** He's trying to reflect government policy about referenda when he moves this motion and doesn't want the government members to be caught up in their own contradictions. A famous economist said that capitalism would destroy itself because of its own contradictions. I would hate to see this Tory party destroy itself because of its inner contradictions. That's what I see in this amendment: It's to allow you to bail out of an

oversight in the bill, which doesn't allow for a referendum even though you are big fans of holding a referendum to give decision-making power back to the grass-roots, which is, by definition, it seems to me, the local level.

If you vote against this, which of course you have every right to do, it's going to be increasingly hard for the government to proceed with any referendum. You ridiculed the referendum that was held in Toronto on amalgamation. You will, I suspect, vote against this call for a referendum, even though you're the honchos who like referenda. It's going to be very interesting to see, if in the future you should decide there's some issue that should go to a referendum, how you are going to sustain an argument that such should be the case. You're going to be laughed out of town, when you keep voting against referenda or ignoring them. It's going to be interesting to see how you pull that off. But, of course, that's what makes politics interesting: to see how you will do that.

In conclusion, I support this amendment because I'm in a charitable frame of mind and want to be kind to the Tories today.

**The Chair:** Further debate? Seeing none, I'll put the question.

**Mr Agostino:** Recorded vote, please.

**Mrs Barbara Fisher (Bruce):** Excuse me, Madam Chair, could I have clarification of the motion number, which page?

**The Chair:** It's page 4, the top right-hand corner.

**Ayes**

Agostino, Hoy, Laughren.

**Nays**

Barrett, Boushy, Chudleigh, Fisher, Galt, Ouellette.

**The Chair:** The amendment is lost.

Moving to the next amendment, the top right-hand corner, page 6, a Liberal amendment, Mr Agostino.

**Mr Agostino:** I have to read the whole thing out, right?

**The Chair:** Yes, you do.

1540

**Mr Agostino:** I move that subsections 56.2(1) and (2) of the Capital Investment Plan Act, 1993, as set out in subsection 2(2) of the bill, be struck out and the following substituted:

"Conditions for transfer of waterworks

"(1) A municipality shall not transfer the ownership of all or part of a water works to another person unless,

"(a) the municipality has repaid to the crown,



"(i) all payments that were made by the crown on or after April 1, 1978 for the purpose of subsidizing the capital cost of the transferred works, and

"(ii) all payments that were made by the crown on or after April 1, 1978 for the purpose of subsidizing the capital cost of other waterworks that have been used to provide water service to the municipality; and

"(b) the municipality has had a public accountant licensed under the Public Accountancy Act do a full cost accounting of the transfer and has made copies of the accounting available for inspection by the public.

"Conditions for transfer of sewage works

"(2) A municipality shall not transfer the ownership of all or part of a sewage works to another person unless,

"(a) the municipality has repaid to the crown,

"(i) all payments that were made by the crown on or after April 1, 1978 for the purpose of subsidizing the capital cost of the transferred works, and

"(ii) all payments that were made by the crown on or after April 1, 1978 for the purpose of subsidizing the capital cost of other sewage works that have been used to provide sewage service to the municipality; and

"(b) the municipality has had a public accountant licensed under the Public Accountancy Act do a full cost accounting of the transfer and has made copies of the accounting available for inspection by the public."

**The Chair:** Do you wish to explain this?

**Mr Agostino:** Yes, I do. Basically what this does is force a municipality to ensure that there's a full public accounting done before the transfer is made and that the report be available to the public. What we've seen so far is that this committee, the government members obviously on this committee, have chosen, in the first step, to allow municipalities now to be able to sell water and sewer works. You had an opportunity to make that provision in the legislation and you refused to do so.

We in the opposition then gave you an opportunity to hold a referendum before this is done, and we believed, as Mr Laughren said clearly, that, consistent with government policy and consistent with the Common Sense Revolution, you would have liked that idea of referendums. For some bizarre reason, you chose not to like that idea of referendums either.

You've allowed the municipalities to do it. You have now said there will not be a referendum. We're asking for a third phase to at least ensure there is an open, public accounting process to any move before it's made. You would think there would be a cost analysis; you would think there would be an opportunity for the residents of that particular community to understand very clearly what the impact would be. That impact obviously would include how it's going to impact their water rates, how it's going to impact their sewer rates, what this transfer of ownership would mean to them.

I would think my friends on the government side of the House, who obviously adhere to the business approach to governing at every level and every step of governing, would see this as a good thing, that very clearly you would not in your own private business undertake such a venture without having this done and without this type of analysis being available, and that the full accounting of the transfer and the impact that would have would be done.

That being said, we have seen that not happen in many other areas where you have changed legislation in Ontario, right from the impact of the downloading to the municipalities that was done without that sort of analysis, to many other pieces of legislation that really are not relevant to this committee and so I won't bore you with them. But very clearly there has been a consistent pattern of failing to do that type of analysis that normally you would advocate in your own private business and that you normally would advocate as a way of doing business, that you would have this available to the public.

We're hoping you will see this very much fitting in with your philosophy, fitting in with your approach to governing and ensuring that the public would have the right to see a full public accounting before a transfer is made.

Most importantly, I think, in all of this would be the projections. If you transfer the ownership and ability to set the rates to a private sector company, what will the impact be on the consumer? What does the average homeowner or the average tenant in a municipality affected pay in increased water or sewer rates, or decreased rates if you think that will happen? But that information should certainly be there and made available.

That's really what this amendment does. It's pretty basic and straightforward. I think it's really something the government members would feel very comfortable with, because it is keeping with your philosophy of the way the public should be made aware when such changes occur.

**Mr Doug Galt (Northumberland):** I'm going to make a few comments. Thanks very much for the consideration of the amendment, but we believe this particular amendment is unnecessary. We believe the grant repayment provision will provide a very strong deterrent to the sale of water and sewage infrastructure to the private sector. We do, however, support the use of full-cost accounting for pricing the delivery of water and sewage services.

I'd also draw to your attention that as far as a deterrent to the transfer or sale, we must give recognition and credit to those who were elected locally. They certainly are closest to the people. I think as we debate this and put all kinds of barriers in their way, we're really saying they're really not a competent group of people who were elected. I, for one, hold municipal elected people in very high regard. With the deterrent that they have to repay the grants, this should be well covered.

**Mr Laughren:** I wasn't going to support this motion until I heard the parliamentary assistant speak. Now I think I will.

I'll tell you why I was having second thoughts. There could have been millions of dollars in grants back in 1978 and there's no allowance for any kind of interest on that grant, that it be paid back. That's a very big subsidy if the grant is substantial and if it goes back far enough. One year wouldn't make that big a difference, but that's a huge subsidy to the private sector if you do that.

Secondly, and the reason the parliamentary assistant convinced me I should support it, was that it seems to me that this is, if anything, protecting the municipal folks by saying, "Look, we've got no choice; we have to do a full accounting of this transaction." It's a form of great protection at the municipal level.

We all know there have been games played from time to time on these kinds of matters and it seems to me that it's an automatic protection. It removes any possibility of games being played or anybody making an undue bonus on this, if I could put it delicately. It seems to me, for those reasons, I fully intend to support this.

**Mr Agostino:** Just one point, to respond to what the parliamentary assistant said. The argument keeps coming back, whether it's a referendum, whether it's prohibiting municipalities from selling their services or whether it's the issue of a full public accounting. In analysis of this, the argument comes back that there's a deterrent provided by the fact that the grants are to be repaid, but no one has really addressed what happens if that deterrent is not enough. That is not a fail-safe mechanism. It's one that the government hopes will be enough to stop this from happening, but you're also refusing to put in protections in case that doesn't happen.

There's no guarantee it will not happen. No one on the government side will sit there and guarantee that municipalities will not consider at any time in the future the possibility of selling their assets. The deterrent is there and you feel it may be enough. What we're asking for here is a little more protection in case that deterrent, for whatever reason, is not enough.

What the parliamentary assistant refers to as barriers I refer to as checks and balances in the system, frankly, to ensure that there is at least a full public process from the point of view of accounting if you're not going to allow a referendum to occur. But you're giving yourself no protection and giving municipalities no protection if that provision that you believe will be the key provision fails.

**The Chair:** Any further debate?

**Mr Agostino:** Recorded vote, please.

**The Chair:** Okay. Seeing none, I'll put the question. Shall the amendment carry?

**Ayes**

Agostino, Hoy, Laughren.

**Nays**

Boushy, Chudleigh, Fisher, Galt, Ouellette.

**The Chair:** The motion is lost.

**Mr Laughren:** On a point of order, Madam Chair: I stand to be corrected on this, I don't want to be mischievous in this whole thing, but I don't think that Mr Boushy voted on the last vote.

*Interjection.*

**Mr Laughren:** He did. He voted against the motion. Was that in the recorded motion?

**Clerk of the Committee (Ms Donna Bryce):** Yes.

**Mr Laughren:** Okay. Thank you for that.

**The Chair:** I draw the committee's attention to the next amendment, an NDP amendment. It's on page 8, a further NDP amendment on pages 9 and 10, and a further NDP motion on pages 11 and 12. Those are identical amendments to some that have been presented before and are therefore out of order.

We move then to an NDP amendment, number 13 in the top right-hand corner.

1550

**Mr Laughren:** I move that subsections 56.2(1) and (2) of the Capital Investment Plan Act, 1993, as set out in subsection 2(2) of the bill, be struck out and the following substituted:

"Conditions for transfer of waterworks

"(1) A municipality shall not transfer the ownership of all or part of a waterworks to another person unless,

"(a) the municipality has repaid to the crown,

"(i) all payments that were made by the crown on or after April 1, 1978 for the purpose of subsidizing the capital cost of the transferred works, and

"(ii) all payments that were made by the crown on or after April 1, 1978 for the purpose of subsidizing the capital cost of other waterworks that have been used to provide water service to the municipality; and

"(b) the Minister of the Environment and Energy or the Environmental Assessment Board has given the approval to proceed under section 9 or 9.1 of the Environmental Assessment Act respectively as if the transfer were an undertaking within the meaning of that act.

"Conditions for transfer of sewage works

"(2) A municipality shall not transfer the ownership of all or part of a sewage works to another person unless,

"(a) the municipality has repaid to the crown,

"(i) all payments that were made by the crown on or after April 1, 1978 for the purpose of subsidizing the capital cost of the transferred works, and

"(ii) all payments that were made by the crown on or after April 1, 1978 for the purpose of subsidizing the capital cost of other sewage works that have been used to provide sewage service to the municipality; and

"(b) the Minister of the Environment and Energy or the Environmental Assessment Board has given the approval to proceed under section 9 or 9.1 of the Environmental Assessment Act respectively as if the transfer were an undertaking within the meaning of that act."

**The Chair:** Thank you. Do you wish to comment?

**Mr Laughren:** Very briefly, this is simply another provision to discourage the transfer of ownership from municipalities to the private sector. Rather than simply decreeing it, it brings into play the Ministry of Environment and Energy and the Environmental Assessment Board.

**The Chair:** Further debate?

**Mr Pat Hoy (Essex-Kent):** The notion that municipalities will not undertake to sell these plants has been discarded by the government over and over again. However, with downloading to municipalities in the range of two thirds of a billion dollars, we'll put them in a situation that they've never undertaken before. We have a new era and new hardships for municipalities to deal with.

I happen to know of a transition team that is at work in Chatham-Kent. They are to meet on May 9, and part of their mandate as they look at former municipalities under a newly restructured Chatham-Kent is to review and approve all financial expenditures of the former municipalities in excess of \$10,000 that are not included in the approved municipalities' operating capital budgets of 1997. So clearly the government, through their commissioner, has seen that there may be deep concerns that



municipalities will take certain actions in light of restructuring, downloading and massive changes within Ontario.

It seems to me the government members would look at this resolution as they did with some previously in providing safeguards to the public as it pertains to the sale of water and sewage plants. If the government has this notion that municipalities will take certain actions under a restructuring model, both here in Toronto and in Chatham-Kent, I don't see why they wouldn't see the rationale for an amendment such as this and previous ones.

Clearly, the government has said, "Maybe the municipalities are going to be under some condition that will cause them to do things they wouldn't normally have done," and I think that same argument pertains as well to this motion. How can the government have a commissioner put in place who says we're going to safeguard the purses of municipalities in a certain way, but then when it comes to this particular bill, the government says that because of the fact that grants were given, the municipalities certainly wouldn't act in such a way?

I find the government's situation to be inconsistent and I agree with this motion.

**Mr Galt:** If I may, Madam Chair, just a few comments in connection with this particular motion. Certainly we do not see it as being a necessary motion. I have mentioned many times that the grant as a repayment will provide a provision that will be a deterrent for the sale of water or sewage infrastructure to the private sector, and if anything does move, or should that happen, it really would be inappropriate to expand the scope of the Environmental Assessment Act in this context.

This is a business transaction that we're really talking about. The opposition keeps harping on this word "downloading," but maybe they should note that we have just agreed with AMO and their proposal, and it's all about being revenue-neutral and disentangling, which the previous governments had talked about. Maybe better terminology, because we could talk about uploading to the province on the educational side, might be "proper loading" or "right loading." If you want to use "proper loading" or "right loading," it might be in order.

**Mr Laughren:** The parliamentary assistant keeps making comments that it's not necessary. I wonder, is he sure that the bill is necessary? I'm not sure at all that this bill is necessary. Maybe we should rethink this whole process. Maybe we should just jettison the bill.

**Mr Agostino:** Upload the whole thing to the provincial level.

**Mr Laughren:** Yes. I'm starting to think about it. If the parliamentary assistant got to thinking about what's necessary and what's not necessary, that's a good thing.

**The Chair:** Seeing no further debate then, I'll put the question. All those in favour? Opposed? The motion is lost.

Moving to the next amendment, an NDP amendment also, in the top right-hand corner 15 and 16. Mr Laughren.

**Mr Laughren:** I move that subsections 56.2 (1) and (2) of the Capital Investment Plan Act, 1993, as set out in subsection 2(2) of the bill, be struck out and the following substituted:

"Conditions for transfer of waterworks

"(1) A municipality shall not transfer the ownership of all or part of a waterworks to another person unless,

"(a) the municipality has repaid to the crown,

"(i) all payments that were made by the crown on or after April 1, 1978 for the purpose of subsidizing the capital cost of the transferred works, and

"(ii) all payments that were made by the crown on or after April 1, 1978 for the purpose of subsidizing the capital cost of other waterworks that have been used to provide water service to the municipality; and

"(b) the person obtaining the transfer" — and this is an important section — "has paid the municipality the fair market value of the land that is the subject of the transfer.

"Conditions for transfer of sewage works

"(2) A municipality shall not transfer the ownership of all or part of a sewage works to another person unless,

"(a) the municipality has repaid to the crown,

"(i) all payments that were made by the crown on or after April 1, 1978 for the purpose of subsidizing the capital cost of the transferred works, and

"(ii) all payments that were made by the crown on or after April 1, 1978 for the purpose of subsidizing the capital cost of other sewage works that have been used to provide sewage service to the municipality; and

"(b) the person obtaining the transfer has paid the municipality the fair market value of the land that is the subject of the transfer."

What's different about this one, of course, is the issue of the land, the market value of the land. Since the government's big on market value, it would seem to me that this would strike a responsive chord deep in their souls, that you'd want to get market value for the land, because other references to sewage works and waterworks do not necessarily include the land that might be surrounding those facilities.

I don't know of an example. In some cases I suspect it could be substantial, but I don't know that. If that's the case, then there should be an assurance here that there's a fair market value paid for that land. You know and I know — I don't care if you use the term "actual value assessment" or "current value assessment." I couldn't care less what language you want to put in here. If you want to amend it to include one of those other Orwellian words, I've got no problem with that. But it seems to me that it's not enough just to transfer the ownership of the sewage or water works, but you must also include any land that's attached to those works and belongs to the municipality.

**Mr Galt:** I am a little hesitant to comment because as soon as I do, I kind of irritate the member for Nickel Belt and he doesn't support me any more. I might have gotten support if I hadn't spoken. However, the member for Nickel Belt might be interested to realize the land is included in the grant structure and, as mentioned earlier, we believe the grant structure will be a deterrent to prevent the transfer. We also give an awful lot of credit and accountability to the locally elected people who will look after those structures. Therefore I cannot support this particular amendment.

1600

**Mr Hoy:** Mr Laughren has mentioned the possible amending of this because he has used fair market value. In a question today to the Minister of Municipal Affairs and Housing, it wasn't clear to me what the differences were between market value, actual value or current value, except for the comment made by the minister that it was the delivery of same. So perhaps if the government wished, and with the agreement of Mr Laughren, all three of those should be incorporated into this amendment, because I'm not clear from what the minister stated today whether there is any difference between market value, actual value and current value.

**Mr Laughren:** I see that as a friendly amendment.

**The Chair:** I've been advised to indicate that there's no such thing as a friendly amendment in committee, that in fact the procedure would require that amendment to be withdrawn and redone and then moved with the appropriate changes.

**Mr Hoy:** I think they're all the same, but if the government was curious about it, we could have them all.

**The Chair:** Leave it as it is? Okay. Any further debate? Seeing none, I'll put the question: Shall the amendment carry? All those in favour? Opposed? The amendment is lost.

We move next to a Liberal amendment, page 17.

**Mr Agostino:** Well, on 17 and 18, it would have been basically useful had the government accepted the amendment in regard to prohibiting the sale or the privatization. Since that didn't happen, then 17 and 18 would be redundant, and I'll withdraw.

**The Chair:** Numbers 17 and 18 are withdrawn. We move then to another NDP motion, and I note that this is an identical amendment to one that has been before us. Actually, I am in error; because the first two were withdrawn, this is in order if you wish to proceed, Mr Laughren, page 19.

**Mr Laughren:** I move that section 56.2 of the Capital Investment Plan Act, 1993, as set out in subsection 2(2) of the bill, be amended by striking out subsections (5), (6) and (7). I think it's self-explanatory.

**The Chair:** Any further debate? Seeing none, I put the question: Shall the amendment carry? All those in favour? All those opposed? The amendment is lost.

I draw your attention to the amendment to subsection 2(2), subsection 56.2(6). It's an NDP amendment, page 20. This amendment is out of order because it's consequential to another amendment earlier in the amendments.

We move then to another NDP motion, top right-hand corner page 21.

**Mr Laughren:** I move that section 56.2 of the Capital Investment Plan Act, 1993, as set out in subsection 2(2) of the bill, be amended by adding the following subsection:

"Directives

"(8) If a municipality has transferred the ownership of all or part of a waterworks or sewage works under subsection (1) or (2) respectively to a person, the Environmental Assessment Board may give directives to the person with respect to the operation of the works and the person shall comply with the directives."

If I could speak to that, this makes the unhappy assumption that a sale occurs to another person, to the private sector, basically, and that if that's the case, then in order to maintain quality, level of service and presumably even price at reasonable levels, the Environmental Assessment Board may give directives to whoever takes on ownership of the service.

This is the kind of thing they didn't do, I gather, in Great Britain, and there weren't the controls over it. It says, "may give directives," so it's not unduly heavy-handed. If there's no problem and the level of service is appropriate and price is as well, then the Environmental Assessment Board would not have to intervene. But if it's apparent that there are problems, the assessment board may give directives to the operation of the works etc. and that person, that owner, would have to comply with those directives. So I don't think it's unreasonable, and it would allay some of the fears that you heard in the committee hearings when people waved around the examples from Great Britain and expressed a great deal of concern about that in terms of price and quality and, quite frankly, availability of service in some cases.

I think this is not at all an unreasonable amendment. If government members want to at least feel somewhat justified in their independence as backbenchers, they could support an opposition amendment such as this without, I would think, getting in too much trouble from your boss. It would be reasonable and I think people would applaud the fact that you'd actually broken out and indicated that indeed there does beat within your pinstripe corporate souls some independence and that you do recognize a reasonable amendment when you see it and one that, quite frankly, would improve the bill. I don't know why I'm trying to help you out again, but this actually would improve the bill and I would encourage you to support it.

**Mr Hoy:** I appreciate Mr Laughren wanting to help the government. I think we all want to make any type of legislation better legislation.

In a conversation with someone who recently visited England, they must have had a flaw in their legislation, a grievous error, whereby now those people in the rural communities are being challenged as to whether they have water rights for those below-ground wells. The corporations or persons, I guess is the correct terminology in legal terms, that own water rights in Great Britain now have extended that to the fact that they own the ground-water rights, and there is some vigorous discussion as to whether the people in rural areas actually can drill a well on their own properties and access water on their own property.

We in the opposition are trying to make bills better bills, and I think that's what Mr Laughren is trying to do with respect to this motion.

**Mr Galt:** It's almost scary when the member for Nickel Belt starts. He's so persuasive, how he can convince us. He was very effective there.

**Mr Laughren:** I haven't convinced anybody of anything.

**Mr Galt:** Certainly we're unable to support this particular amendment. We've mentioned the grant repayment several times, which will be a deterrent. This



act is not about creating horrible things like monopolies, which the opposition is quite concerned about, and it's certainly very inappropriate that the Environmental Assessment Board would be involved with this kind of activity. Municipalities will continue to set rates, and directives certainly are not necessary for those kinds of things. So I am unable to support this particular amendment.

1610

**The Chair:** Further discussion or debate? I then put the question: Shall the amendment carry? All those in favour? All those opposed? The amendment is lost.

The next motion is also an NDP motion.

**Mr Laughren:** It's going to be very difficult for the government to oppose this one.

I move that section 56.2 of the Capital Investment Plan Act, 1993, as set out in subsection 2(2) of the bill, be amended by adding the following subsections:

"Standards and reporting for water

"(8) A person to whom a municipality has transferred the ownership of all or part of a waterworks under subsection (1) shall, with respect to the drinking water that the waterworks produces,

"(a) comply with the standards that the Lieutenant Governor in Council may establish by regulation under subsection (10) to ensure the right of the public to clean drinking water; and

"(b) report to the Minister of the Environment and Energy at the times and with the information, including the results of sampling, that the minister may require with respect to the quality of the drinking water.

"Offence

"(9) A person who contravenes subsection (8) is guilty of an offence and on conviction is liable to a fine of not less than \$50,000 and not more than \$1,000,000.

"Regulations

"(10) The Lieutenant Governor in Council may make regulations establishing standards limiting the amounts of contaminants in drinking water that may adversely affect human health or the quality of the water or that may cause odours or problems with the appearance of the water."

If I could speak to it, I think this is quite straightforward. It's hard to imagine that the pointy-headed lawyers even got their hands on this one, it's so straightforward and clear. It talks about standards, and it's important that if we're going to turn these systems over to the private sector, there be some kind of safeguards here. This isn't an anti-private-sector diatribe, but if you're going to turn it over to the private sector, it seems to me you need to have some sense in the community at large that there's protection there. It may never be necessary. Heaven help us, that would be great. But once again, we read what happened in Great Britain. You know that it may be necessary, and you will be as vulnerable as the private sector if that's the case.

All it's asking is that whoever operates the service — this is assuming it's been privatized — the Lieutenant Governor, the cabinet, can establish regulations to make sure the public has the right to clean drinking water and also that there be reports to the Ministry of Environment etc. It allows for a fine to be imposed and also that the

Lieutenant Governor may make regulations concerning the amount of contaminants in drinking water that may affect health, or odour for that matter. I've had constituents who had their water tested — this has nothing to do with the private sector or public sector — and it was healthy, but the odour in the water was incredible. So it can happen, whether it's privately owned or publicly owned.

I think there needs to be the permission for government to bring in regulations that look after those problems. Once again, I don't think it's expecting too much, when you consider the importance of water to our public health, to ask for support for this amendment.

**Mr Agostino:** I'm going to be supporting the amendment. I'm going to be quite interested in hearing the government members justify how they're going to vote against clean drinking water.

Very clearly what this is saying is to set up some clear standards and not to give some outside group but to give the cabinet and the government the power to do that. Really what we're talking about is ensuring there's a standard that is met, that people can be assured that once you've privatized it and once you have turned it over the private sector, at least there will be some protection from the point of view that the public knows that government has a role to play in ensuring that there are standards there. I don't think anybody on the government side of the House would disagree with the fact that you have that responsibility and you have that power to act in such a manner.

You, through accepting this motion, would at least give some assurance that you will take a role and responsibility in ensuring there's clean drinking water and safe drinking water. I would think whether it's private sector, public sector ownership or anyone else, that's something that is motherhood and apple pie here. I don't think anybody could disagree with this, and I would urge for a case of democracy to break out within that caucus on that side and to vote in favour of this.

**Mr Laughren:** Careful.

**The Chair:** Further debate?

**Mr Galt:** Just a few comments into the record to indicate the non-support for this particular amendment. The Minister of Environment and Energy uses certificates of approval to implement existing Ontario drinking water objectives in the provincial water quality objectives for water and sewage treatment facilities. These objectives are incorporated as conditions and the certificates of approval have the force of law. This method of implementing standards has been in place for many years and will continue.

Bill 107 does not weaken environmental standards. The above amendments duplicate the authority provided by the Ontario Water Resources Act. Furthermore, existing Ontario drinking water objectives provide criteria to ensure safe, aesthetically pleasing drinking water.

The Ontario Water Resources Act, section 75(1)(i), provides the authority for the establishment of standards for water quality, including health and aesthetic criteria. The Ontario Water Resources Act, sections 52(4)(b), (c), (d), 52(5), 52(6) and 75(1)(k), provides the Minister of Environment and Energy with the authority to require reporting and drinking water quality.

Also the Ontario Water Resources Act, section 108(1), provides for maximum fines of \$10,000 on a first conviction and some \$25,000 on subsequent convictions for people convicted of an offence under the Ontario Water Resources Act for each day or part of a day in which an offence occurs or continues.

Further, the Ontario Water Resources Act, section 108(2), provides for maximum fines of \$50,000 on a first conviction and \$100,000 on subsequent convictions for people convicted of an offence under the Ontario Water Resources Act for each day or part of a day in which an offence occurs or continues.

It's also interesting that the Honourable Ruth Grier, when the previous government first started, had on the books a clean drinking water bill. For some reason or other, that got dropped. I really don't know why, if the opposition today is so interested in it, Mrs Grier wouldn't have carried through, or at least after the cabinet shuffle, the subsequent Minister of the Environment, the Honourable Bud Wildman, wouldn't have carried through with this particular bill. I gather they must have similarly seen some problems — I say "similarly" — but they must have seen some problems with a clean drinking water act. For the above reasons, we will not be supporting this bill at this time.

**Mr Laughren:** Just for the record, I want it noted that Mr Agostino, since we started debating this bill, has switched to bottled water.

**Mr Agostino:** Well, the parliamentary assistant certainly didn't help.

**The Chair:** Further debate? Seeing none, I put the question, shall the amendment carry? All those in favour? Opposed? The amendment is lost.

Seeing no further amendments to section 2, shall section 2, as amended, carry?

**Mr Agostino:** A recorded vote on that, please.

#### Ayes

Barrett, Boushy, Chudleigh, Fisher, Galt, Hastings, Ouellette, Spina.

#### Nays

Agostino, Hoy, Laughren.

**The Chair:** Section 2 carries.

Section 3, please. A government amendment.

**Mr Galt:** I move that section 75.1 of the Environmental Protection Act, as set out in subsection 3(4) of the bill, be amended by adding the following subsection:

"Joint jurisdiction

"(5.1) If an agreement under subsection (4) or (5) is in effect, the local municipalities or the upper-tier municipalities, as the case may be, have joint jurisdiction in accordance with the agreement in the area comprising the municipalities."

This new subsection (5.1) clarifies and makes explicit the implied authority for a municipality to act outside its boundaries when assigned to a joint administration agreement. This removes all doubt if there's any question. There was some concern that there might be some question there.

1620

**Mr Laughren:** When I first read it I supported it, but hearing the explanation I now don't.

**The Chair:** Any further questions? Seeing none, I put the question. Shall the amendment carry? All those in favour? Opposed? The amendment carries.

The next is also a government amendment.

**Mr Galt:** I move that subsection 75.2(2) of the Environmental Protection Act, as set out in subsection 3(4) of the bill, be struck out and the following substituted:

"Agreements

"(2) The Minister of Municipal Affairs and Housing and a person or body prescribed by the regulations or a municipality may enter into an agreement providing for the performance of the minister's responsibilities under this section by the person or body or the municipality, as the case may be, in the area of territory without municipal organization designated by the agreement, including the designation of approving authorities and inspectors under sections 75.4 and 75.5 respectively."

The Minister of Municipal Affairs and Housing will be administering part VIII in the unorganized areas. This amendment broadens the Minister of Municipal Affairs and Housing's authority to enter into administrative agreements with boards of health and municipalities in general. The Minister of Municipal Affairs and Housing will be able to enter into an agreement with a municipality close by to a portion of the unorganized area and not just with the board of health.

**Mr Laughren:** I'm a little concerned about it. My own constituency has a lot of areas without municipal organization and I'm puzzled by it. I don't know whether to support it or oppose it, and I know that doesn't matter much to you. But at the same time I really don't know whether to oppose this or support it, because I don't know what it means when it comes to those vast areas with very small communities within them that need service. I'd appreciate further explanation. Maybe it's because it's written by pointy-headed lawyers that I don't understand it.

**Mr Galt:** We'll try and be gentle on the lawyers today. Several of our amendments relate to clarification. My understanding is, the way it was written before, there might be some doubt as to whether the Minister of Municipal Affairs and Housing really could enter into these kinds of agreements or not. This is here to clarify and ensure that they can enter into those kinds of agreements on behalf of the unorganized area.

**Mr Laughren:** Was there a reason why municipal affairs was selected rather than northern development as the ministry responsible for that?

**Mr Galt:** My understanding is they are already involved in other activities in the unorganized territories, like building permits and that kind of thing, and this is just an extension. The intent here was to make this a one-window inspection activity, if possible, if that's what the local municipality wanted, so consequently it carried through. There was certainly some consideration whether there should be other groups such as the Minister of Environment continuing, and we felt no, to obtain that one-window-shopping type of thing, it should be MMAH that would take it over. This just clarifies and makes sure that there's no confusion down the road by the courts.



**Mr Joseph Spina (Brampton North):** I just want to comment on Mr Laughren's concern about why it wouldn't have gone through northern development. There are unorganized territories, as you know, as well in southern Ontario in some areas. By the Minister of Municipal Affairs handling it, obviously it covers the entire province.

**The Chair:** Further discussion? Seeing none, I put the question. Shall the amendment carry? All those in favour? Opposed? Carried.

Another government amendment.

**Mr Galt:** I move that section 75.2 of the Environmental Protection Act, as set out in subsection 3(4) of the bill, be amended by adding the following subsection:

"Jurisdiction

"(3) A municipality or person or body that has entered into an agreement under subsection (2) has the jurisdiction to enforce sections 76 to 79 in accordance with the agreement in the area of territory without municipal organization designated by the agreement."

This makes explicit the contracted municipality's authority to act outside its boundaries.

**The Chair:** Further discussion? Seeing none, I put the question. Shall the amendment carry? All those in favour? Opposed? The amendment carries.

Another government amendment.

**Mr Galt:** I move that clause 136.1(b) of the Environmental Protection Act, as set out in subsection 3(14) of the bill, be struck out and the following substituted:

"(b) a reference in this part to the crown in right of Ontario shall be deemed,

"(i) in the case of an approval or order of an approving authority designated by the council of a municipality, to be a reference to the municipality, and

"(ii) in the case of an approval or order of an approving authority designated by the council of a municipality or a person or body that has entered into an agreement with the Minister of Municipal Affairs and Housing under subsection 75.2(2), to be a reference to the municipality or the person or body, as the case may be."

This amendment is complementary to the extension of the authority of the Minister of Municipal Affairs and Housing to enter into agreements from boards of health to municipalities.

**The Chair:** Further discussion or comment? Seeing none, I put the question. Shall the amendment carry? All those in favour? Opposed? It carries.

The next is also a government amendment.

**Mr Galt:** I move that clause 176(6)(j.5) of the Environmental Protection Act, as set out in subsection 3(16) of the bill, be amended by adding at the end "or inspectors."

This amendment ensures that the powers and duties of the inspectors as well as of the approving authorities can be regulated. For example, inspectors can be required to keep personal information confidential even if they are not subject to the Municipal Freedom of Information and Protection of Privacy Act.

**The Chair:** Further discussion or comment? Seeing none, I put the question. Shall the amendment carry? All those in favour? All those opposed? The amendment carries.

Government amendment, page 28.

**Mr Galt:** I move that subsection 176(6) of the Environmental Protection Act, as set out in subsection 3(16) of the bill, be amended by adding the following clause:

"(j.6) requiring persons to be certified if they do any work described in clause 80(1)(a) or (b), whether or not they are engaged in the business of doing the work;"

The present legislation enables the licensing of persons in the business of installing sewage systems. This amendment will enable regulations ensuring that persons who work on sewage systems are qualified to do so, including a crew engaged by the person in the business. In other words, we want to ensure that someone who is on the site is actually certified, not just somebody back in the office who has sent out a crew.

**The Chair:** Further questions or comments? Seeing none, I put the question. Shall the amendment carry? All those in favour? Opposed? The amendment carries.

Seeing no further amendments to section 3, shall section 3, as amended, carry? All those in favour? Opposed? Section 3 carries.

Section 4: Any amendments or comments? Shall section 4 carry? All those in favour? Opposed? It carries.

Seeing no amendments to section 5, shall section 5 carry? All those in favour? Opposed? Section 5 carries.

Section 6: A government amendment, please.

1630

**Mr Galt:** I move that subsection 6(2) of the bill be struck out and the following substituted:

"Same

"(2) Sections 3, 4 and 5 come into force on a day to be named by proclamation of the Lieutenant Governor."

This amendment is responding to the concerns from municipalities which have requested that the effective date of the transfer of authority under part VIII of the Environmental Protection Act to municipalities not occur sooner than other Who Does What initiatives. It will also ensure that they have sufficient time to prepare themselves for the transfer.

We certainly heard a lot about this on the road and indicated earlier that it definitely would not occur before January 1, and this does leave some flexibility that it can be established at a time even a little later than that if necessary.

**Mr Agostino:** I understand the need. However, I don't think this amendment goes far enough. It really leaves it open. It could be January 1. The municipalities have made it very clear that the time is not there, and I certainly hope the government members can tell us here today what day they expect these regulations to go into effect and what date they would expect the municipalities — whether it's January, March, July, September, 1999 or 2000.

I would think, from the point of view of some flexibility, they should look at a date. The municipalities have made it very clear that your initial date was not good enough. I don't think January 1 is good enough either, so I wonder if Mr Galt can point out to us today at the committee level what day they expect this regulation to go into effect.

**Mr Galt:** Certainly we would like to see it January 1 if at all possible. That is the intent. However, as we get a little closer, if that's not practical or realistic, then we

can move it down a month or two. What we don't want to happen is to have it transferred in April or May when it is a busy time for septic installers or in the fall, another busy time. This does give some flexibility, but very seriously we would like to see it happen come January 1, if it's practical as we get closer to that date.

**Mr Laughren:** I found it interesting that the government is moving this amendment, because the way it was written previously was an indication of what a simple-minded process the government thought this was. You simply pass a bill that says, "It's all yours," and get on with it. It wasn't until people came before the committee and said, "You're nuts if you think you can have this all done by January 1, 1998." But the people around the minister, I guess, and the minister himself and all those other important and very "smart" advisers all thought it could be done. You know, snap your fingers and something like this is done. It's all so easy. Don't worry about it. Just do it and make them take ownership as of that date.

It took some doing by people out there to say, "You people don't know what you're doing. If you think you can get this done by January 1, 1998, you're nuts." The government has had to back down and say, "All right then, we'll leave it completely open-ended." The way it is now, not only is it not January 1, it's no date at all. It's open-ended completely and that's an indication that they are still floundering as to what they're going to do with this whole thing.

It's not February 1, March 1, April 1, May, June, July, August. No, it's open-ended completely. We'll see what happens as time goes on, but I think it was an example, an indication that this was something that, like a lot of things the government does, they think is so easy. Whether it's transferring welfare down to the municipal level or transferring sewer and water down to the municipal level, it's not as easy as these folks seem to think it is, or thought it was. Now it seems to be sinking in that it's just a little more complicated than they thought it was. Anyway, I'll support this motion because of the speech I just made.

**The Chair:** Further debate or comment? Seeing none, shall the amendment carry? All those in favour? Opposed? The amendment carries.

The next is a Liberal amendment, please. Mr Agostino.

**Mr Agostino:** I move that subsection 6(2) of the bill be struck out and the following substituted:

"Same

"(2) Sections 3, 4, and 5 come into force on July 1, 1998."

By means of explanation, it's really a natural follow-up to the previous amendment introduced by the government, but it would make it more specific in that it gives to the municipalities some pretty clear guidelines as to when this will take effect. The parliamentary assistant mentioned that April or May probably is not a good time and that the fall is not a good time, so July seems to be a perfect time — between April and May and the fall — to make it go into effect.

That would give the municipalities clearly more time than the initial October date, more time than the January 1 date that you made reference to, which I don't think is an unreasonable amount of time. We're talking July here.

We're talking about a six-month period. I think it's fair and I think it makes it pretty clear to municipalities when this would take effect. I certainly would hope that the government would have listened to the municipalities, the people who came forward. I think you ignored 99% of the people who came to the end of the table. The 1% that you're trying to address, I would hope you'd do it right, and you could do that by supporting this amendment.

**Mr Laughren:** I have problems with this one. My friend Mr Agostino, I think his intentions are indeed honourable, as always, of course. But I am concerned about putting a date in, which is why I supported the government amendment. What if, for example, you have a municipality, or several of them, that have enormous difficulties because of restructuring and July 1 is simply not good enough for them, not appropriate? Or what if — and God forbid, I don't want to give the pointy-headed lawyers any more work than they've got — there's a lawsuit dealing with this and things drag on?

I'm nervous about attaching any date to this and, quite frankly, I prefer the government amendment to this one, which is completely open-ended and allows that flexibility if there are serious problems in one or more municipalities. I regret that, Mr Agostino.

**Mr Galt:** I'm thrilled that the member for Nickel Belt is actually supporting something. It is very honourable and patriotic that the member for Hamilton East would consider having this come into force on July 1, but we reject this proposed amendment in favour of the government motion proposing that sections 3, 4 and 5 come into force on a date to be proclaimed by the Lieutenant Governor.

During a speech to the standing committee on March 14, 1997, the Minister of Environment and Energy, the Honourable Norman W. Sterling, indicated that we have heard the municipal concerns surrounding the previously proposed date for the transfer of these responsibilities. We are now proposing the transfer not take place earlier than July 1, 1998.

**Mr Laughren:** Does the minister not know his name?

**Mr Galt:** That was right at the beginning of the hearings. You indicated we heard from a lot of these people before we changed our minds. This had actually been developed prior to the hearings. The effective date should occur within — actually, I didn't know his middle initial was "W," to be quite honest. The effective date should occur within the slow period of program delivery. I wonder what the "W" stands for.

**Mr Laughren:** He may not want us to know.

**Mr Agostino:** Wastewater.

**Mr Galt:** — preferably some time in the fall, winter or early spring. To have this portion of the bill come into effect on the date proposed by this amendment would impose a change in program delivery at the very peak of summer construction activities, risking significant disruption in the continuity of program delivery.

**Mr Agostino:** I think on July 1 instead of giving flags away on that day as part of Canada Day, we can just give water and sewer services away. It would work.

1640

**Interjection:** Are you supporting the motion?

**Mr Laughren:** I prefer to support Norman "Wastewater" Sterling.



**The Chair:** Further debate and comment? I put the question then. Shall the amendment carry? All those in favour? Opposed? The amendment is lost.

Shall section 6, as amended, carry? All those in favour? Opposed? Section 6 shall carry.

Section 7, NDP motion.

**Mr Laughren:** This inspired amendment came as a result of the appearance before this committee of Mr John Sewell, you may recall, the gentleman who did so much to preserve the traditions of Toronto during the debate on amalgamation. I move that section 7 of the bill be struck out and the following substituted:

"Short title

"7. The short title of this act is the Dirty Water and Unsafe Sewage Act, 1997."

It's obviously a tongue-in-cheek amendment, but behind it lies the concern by people that this is what it can lead to, and it certainly did. I know you don't like Great Britain being raised, the UK being raised all the time, but it's true, that was the result of what happened in the UK and that's why this amendment is worded the way it is.

**The Chair:** Thank you, Mr Laughren, but I do believe this amendment is out of order.

**Mr Laughren:** Now you're telling me. I went through all that work.

**Mr Agostino:** Certainly, the intent of this is clearly to point out the flaws in the legislation. You had a great opportunity to enact some very reasonable suggestions made by the public when they came to the end of the table in the three days of public hearings. With the exception of some minor tinkering, you failed to do that, which I think was a great lost opportunity for this government to come out of this with a big winner, to come out of this in a very positive light.

Instead, what you're going to leave now, very clearly, is an accurate reflection to the public that their water and sewer services are up for sale, that municipalities may be forced to sell the assets. Municipalities may be forced to turn this thing over to the private sector, which will mean higher rates and dirty water and unsafe water for Ontarians and higher rates, which maybe should have been added to the bill. We should have added the line in there about higher rates as well, because I think it would have been the end result.

In all seriousness, I'm disappointed because I think there was a great opportunity here with some pretty straightforward, non-political ways — this was not a big partisan issue from the point of view of the amendments made by people at the end of the table throughout the three days of public hearings — to accept two or three of the amendments here today that would have very clearly eased the public's concern. I think it's unfortunate that you failed to do that and that you're going to leave that door open. I certainly hope the time never comes when we're going to be able to say, "We told you so," because if that happens, I think it's going to be disastrous for people in Ontario, particularly when municipalities start looking at privatizing this.

I think it's unfortunate. I think you had a great opportunity here to put the partisan politics of amendments aside and act in a way that would have put people's minds at ease, and I think you failed to do that.

**The Chair:** Shall section 7 carry? All those in favour? Opposed? Section 7 carries.

We move now to the schedules of the bill. Seeing no amendments to section 1 of schedule A, section 2 of schedule A, section 3 and section 4, shall sections 1 through 4 of schedule A carry? All those in favour? Opposed? Carried.

Section 5 of the schedule, a Liberal amendment.

**Mr Agostino:** I move that section 5 of the Municipal Water and Sewage Transfer Act, 1997, as set out in schedule A to the bill, be struck out and the following substituted:

"Transfer to two or more municipalities

"5. The minister shall not make a transfer order transferring ownership of a waterworks or sewage works, or a group of waterworks or sewage works, to two or more municipalities unless the municipalities consent to the order."

This would very clearly cover off the areas where there is jurisdiction in more than one municipality. You've talked about the 60 out of the 200 that have asked; we don't know if the other 140 want this or whether you're choosing to impose this upon them. Where you have situations where there are two or more municipalities, this forces you to consult and talk to them and gives you an opportunity to obviously back away from it if the municipalities do not believe this wonderful thing you're doing is in their best interests.

We hope the government, in your spirit of consultation and with the great track record that you have in consulting with municipalities that we've seen right along with all the changes you've made, will buy into this as well and see it basically as a housekeeping item that would allow municipalities a guarantee there would be some input before you transfer it.

**Mr Galt:** A thoughtful motion has been put forward, one that we are unable to support. The bill makes special provisions to deal fairly with joint users of area systems and provide adequate time for development of joint ownership and management arrangements. It is important for all involved, especially municipalities, that the transfer process does not drag on and create uncertainty. This activity is about disentanglement, and currently all costs are attributed to the usage. Whether we look in the London area or York-Durham, it is similar, and certainly we've had no municipalities complaining about this. The only thing they're really concerned about is how it is going to work. This should work just fine and we are not supportive of this amendment.

**The Chair:** Further questions or comments? Seeing none, then I put the question. Shall the amendment carry? All those in favour? All those opposed? The amendment is lost.

Moving through sections 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16, I see no amendments. Are there any questions or comments on those sections of the schedule?

Seeing none, I put the question: Shall sections 6 through 16 of the schedule carry? All those in favour? All those opposed? Sections 6 through 16 carry.

Section 17 of the schedule, an NDP amendment.

**Mr Laughren:** I move that section 17 of the Municipal Water and Sewage Transfer Act, 1997, as set out in

schedule A to the bill, be struck out and the following substituted:

"Short title

"17. The short title of this act is the Dirty Water and Unsafe Sewage Transfer Act, 1997."

In the interest of not being repetitive, I won't make the same arguments I made in the previous amendment, because this is attached to the schedule, not the bill itself, but simply to indicate to you that we are unhappy with this bill.

**The Chair:** For the same reason, it is also out of order.

Shall section 17 carry? All those in favour? Opposed? Section 17 carries.

Shall the schedule carry? All those in favour? Opposed? The schedule carries.

NDP amendment under the long title.

**Mr Laughren:** I move that the long title of the bill be struck out and the following substituted:

"An act to promote private profit at the expense of clean water and safe sewage treatment."

I just wanted to note that — this obviously isn't going to carry — I don't think the government accepted a single opposition amendment. They were not all designed to prevent the government from getting its way in terms of transferring the remaining sewer and water projects to municipalities. They weren't all designed to prevent the transfer or the sale of sewer and water services to the

private sector. There were many amendments there that were simply built in to protect the quality of water and the whole issue of the safe treatment of sewage as a result of a transfer to the private sector, because this is something that is new territory for this province. I would have preferred that we erred on the side of caution, and many of the amendments were designed simply to do that.

I would simply remind the government that we as opposition voted for some government amendments; the government didn't vote for a single opposition amendment. With some of them I'm not surprised, but there were other opposition amendments that I think the government could have voted for and still maintained its agenda. I just think that needs to be said.

**The Chair:** Thank you, but again I believe that this amendment is out of order.

Moving then to the long title of the bill, shall the long title of the bill carry? All those in favour? Opposed? The long title carries.

Shall Bill 107, as amended, carry? All those in favour? Opposed? Bill 107, as amended, carries.

Shall I report Bill 107, as amended, to the House? All those in favour? Opposed? I shall report it.

That concludes our clause-by-clause consideration of Bill 107. Thank you very much, everyone. This committee stands adjourned until the call of the Chair.

*The committee adjourned at 1652.*



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### STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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Mr David Christopherson (Hamilton Centre / -Centre ND)

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Mr Pat Hoy (Essex-Kent L)

Mr W. Leo Jordan (Lanark-Renfrew PC)

Mr Bart Maves (Niagara Falls PC)

Mr John R. O'Toole (Durham East / -Est PC)

Mr Jerry J. Ouellette (Oshawa PC)

Mr Joseph Spina (Brampton North -Nord PC)

#### **Substitutions present / Membres remplaçants présents:**

Mr Toby Barrett (Norfolk PC)

Mr Dave Boushy (Sarnia PC)

Mrs Barbara Fisher (Bruce PC)

Mr Floyd Laughren (Nickel Belt ND)

**Clerk / Greffière:** Ms Donna Bryce

**Staff / Personnel:** Mr Michael Wood, legislative counsel



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## Assemblée législative de l'Ontario

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# Official Report of Debates (Hansard)

Monday 9 June 1997

# Journal des débats (Hansard)

Lundi 9 juin 1997

Standing committee on  
resources development

Comité permanent du  
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Subcommittee reports

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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
RESOURCES DEVELOPMENT

Monday 9 June 1997

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU  
DÉVELOPPEMENT DES RESSOURCES

Lundi 9 juin 1997

*The committee met at 1550 in committee room 1.*

## SUBCOMMITTEE REPORTS

**The Chair (Mrs Brenda Elliott):** Good afternoon, everyone. We're here to review the subcommittee report for resources development, which is before you. We met on June 5. At that meeting we had representatives from the government side and from the Liberal Party. Mr Christopherson arrived late and indicated that he would like to come before the entire committee. Do I have a motion to adopt the subcommittee report, please?

**Mr Peter Kormos (Welland-Thorold):** Chair, if I may, I trust you're requesting a motion to adopt subcommittee report number one. That was the recommendation that the full committee have a discussion regarding the organization for Bill 99, the Workplace Safety and Insurance Act, 1996, on Monday, June 9, 1997. I so move acceptance of that report.

**The Chair:** Discussion?

**Mr Bart Maves (Niagara Falls):** At the time of the subcommittee meeting I was the government member on the subcommittee. We discussed the possibility of having a discussion about the time allocation motion. This debate was to have taken place today at 5:30 to 6 o'clock following consideration of the Minister of Transportation's recent bill because that half-hour was to be left over and that's what the subcommittee had agreed to.

Subsequently Mr Christopherson and myself and the Chair discussed the fact that today we wouldn't be having a meeting in relation to the Minister of Transportation's bill, so we said we would have a meeting today from 3:30 to 4:30 for these two notices. Subject to that arrangement, I'm ready to support this motion.

**The Chair:** Further discussion? No. All those in favour?

**Mr Maves:** Do we have to have a submotion to that effect?

**The Chair:** Oh, that's right. I'm sorry. I've got to practice.

**Mr Kormos:** If I may, Chair, I move acceptance of this such that the discussion terminate at 4:30 pm.

**The Chair:** Amendment then to that effect.

**Mr Maves:** That would be more accurate of what was discussed, so that's fine with me.

**The Chair:** Further discussion? No. We are going to have a vote on the motion referring to subcommittee report number one. All those in favour?

**Mr Doug Galt (Northumberland):** Sorry. Did we have an amendment?

**The Chair:** No. Apparently if Mr Kormos is in agreement, then we don't have to have the amendment.

**Mr Galt:** Okay, a friendly amendment.

**The Chair:** I'm sorry. I was confused as well. All those in favour? Hang on.

**Mr Maves:** For clarity, it doesn't preclude us from discussing the second motion.

**The Chair:** Okay, for clarity, the clerk is going to read it.

**Clerk of the Committee (Ms Donna Bryce):** "That the full committee have a discussion regarding organization for Bill 99 Workplace Safety and Insurance Act, 1996, on Monday, June 9, 1997, and that the discussion terminate at 4:30 pm."

**Mr Ted Chudleigh (Halton North):** That's the motion?

**The Chair:** That will be the motion. Further discussion? Okay then, all those in favour of the motion as read? Opposed? The motion passes.

**The Chair:** We'll refer now to report number two before you of the subcommittee of the standing committee on resources development. Could I have a motion, please, for this report to be accepted?

**Mr Kormos:** On a point of order, Madam Chair: A motion has been moved and approved that this committee discuss the matter of time allocation until 4:30 pm. That leaves us 32 minutes to do it. This surely becomes active here and now, which means that we embark upon the discussion authorized by approval of that report from the subcommittee, with respect.

**The Chair:** I think we're all here to discuss the organization, but we have a subcommittee report that we need to deal with as well, which is number two.

**Mr Maves:** We have the discussion on the first motion and then at 4:30 we put the subcommittee report.

**The Chair:** Would you like to do it that way? All right. Debate or discussion please, Mr Kormos, on motion number one.

**Mr Kormos:** I'll make a motion now.

Whereas Bill 99 completely rewrites the Workers' Compensation Act, substantially reducing benefits to injured workers and limiting the independence of the Workers' Compensation Appeals Tribunal; and

Whereas many hundreds of groups and individuals have been seeking public hearings on the government's plans for nearly two years; and

Whereas nearly 1,300 groups and individuals have already sought to make presentations before the standing committee, even before any advertisement of the committee's plans for public hearings; and

Whereas it has been the standing committee's previous practice when considering substantial WCB reforms to include a nontraditional hearing allowing large numbers of injured workers to describe their experiences and make submissions as a group; and



Whereas the time allocation motion allows only 10 hours of committee hearings in Toronto along with only six days of hearings during the summer recess;

I move that this committee recommends to the government House leader that the time allocation order with respect to Bill 99 be amended to allow sufficient committee time to hear the majority of people who wish to make presentations and to give serious consideration to the many important changes being proposed to the Workers' Compensation Act.

Having moved that, please let me comment briefly on that motion. So far I'm advised that 1,297 individuals and groups have requested an opportunity to make presentations on Bill 99, and that includes 573 from Toronto and the Toronto region alone. These individuals and groups made this request before there was any announcement of when and where the hearings might be. As you know, Bill 99 only passed second reading last Thursday.

Notwithstanding those 1,297 who, unsolicited and proactively anticipating hearings, sought the right to appear before the committee, there's going to be even more flowing as a result of second reading and its passage and the advertising that's required across the province.

The time allocation motion, and everybody knows this, calls for 10 hours in Toronto during the session. That's from 3:30 till 6 pm, and that's the maximum amount of time because there will be some days when it will be beyond 3:30 in the afternoon that the committee commences its hearings because of what happens in the House by way of ministers' statements and responses.

1600

#### *Interjection.*

**Mr Kormos:** Today is an illustration, as Mr Hoy points out quite rightly. So we're talking about a maximum of 10 hours, probably a little bit less, in Toronto over a period of four days, plus six days during the recess.

You and I and the committee know this is nowhere near sufficient to provide anything close to a representative cross-section of the various individuals and groups who have a strong interest in what this bill does. I regard this very much as an insult to the hundreds and hundreds of individuals and groups who over the course of the last two years have been trying to have some sort of opportunity during the course of public hearings to provide input, inquire about and respond to the government's plans.

First you shut down — not you, your government — the royal commission which had been making considerable progress in hearing from people across the province until they were summarily shut down.

This bill is 106 pages long. It doesn't constitute amendments to the Workers' Compensation Act; it's a total rewrite of the Workers' Compensation Act. It directly challenges some of the very basic key principles that have been in place ever since the Meredith royal commission led to the original legislation in 1914; even goes so far as to strip the notion of fair compensation from the purpose clause.

It is imperative that the public have an opportunity to participate in meaningful hearings about and around Bill 99. As well, you know that the huge number of

persons affected and who risk being affected — I mean every worker — are prepared to participate and have expressed an interest and have in the past participated in what we've referred to in our motion and will refer to as a non-traditional session, as has been done in the past for major WCB reform. That would be an opportunity for a large number of injured workers who could, far more rapidly than if each sought a slot before the committee, share their experiences and perspectives on the bill.

I'm advised that June 25 has been proposed by injured workers and their major organizations as an appropriate day on which to conduct that type of process. Convocation Hall has been used in the past. I would very much ask the government members to support that. This sparse period of time that's been provided by way of time allocation does an injustice to the members of the committee because it simply doesn't given them adequate time.

I appreciate that there was some discussion in subcommittee about the length of time and that there were some concessions made regarding — I trust our Liberal colleagues may want to speak to this — the length of time for a submission. I have great concerns about contracting the periods of time to such a point where they become virtually irrelevant, especially where there's no opportunity for committee members to engage in some sort of exchange with participants. The people on this committee have been doing this long enough now to understand how important and vital that is for the committee to conduct itself in an integrous way.

I want to indicate this by virtue of reading to you some comments made on behalf of the Canadian Auto Workers. It's a letter dated June 9, 1997, to Mr Decker as clerk:

"I strongly protest the lack of meaningful public hearings on Bill 99.

"I understand that the government has scheduled only 10 hours of hearings in Toronto and six days of travel around the province.

"Bill 99 involves a complete rewrite of the Workers' Compensation Act. Consultation on such a complex bill with such serious implications for the workers of this province must allow adequate time for presentation and discussion.

"Bill 99 is a bill affecting the entire future of safety, labour relations and the treatment of workers injured on the job. It is precisely those injured workers and the unions and injured workers' organizations that represent them who will be excluded by such minute time frames.

"I understand there are approximately 600 requests in the Toronto area and 1,300 requests for all Ontario to make presentations to your committee regarding this bill. This is among the largest number of requests ever for consultation on any bill. Yet the response of the government is to effectively shut out these presenters.

"For example, 10 hours of hearings for 600 presentations allows one minute per presentation. This is an insult to those who have requested standing and a sham in terms of consultation. Ontario-wide, nine days of travel will allow, at most, hearings in six cities around the province. By definition, that will exclude a good part of the Ontario public who will not be able to travel to the locations to meet the committee.

"I urge your committee to reconsider the time allocation for public hearings."

That's signed by Buzz Hargrove, president of the Canadian Auto Workers union.

I can tell you that the views expressed by Buzz Hargrove in this letter on behalf of the Canadian Auto Workers are echoed by every other labour leader in this province. There is simply no doubt about that. This government has from time to time insisted that it has engaged in consultation, when those whom the government purports to have consulted simply can't find anywhere in their memories or records any period of time during which they had been consulted. So be it.

We know that at the end of the day the government has a majority of members. They've demonstrated that clearly over the course of two years now and have no hesitation in acknowledging that. At the end of the day, that majority of members in the Legislature, the government caucus, is going to rule the day, but it will rue the day if it persists in utilizing its power without even a modest semblance of true consultation.

The government controls the legislative agenda. There is a considerable period of time after the end of June for hearings while the House isn't sitting. This government talks — as it did on the matter of the House adjourning for June 2, which was the federal election, and replacing it with the Friday — about the government being ready to get down to work. Here's an illustration of how imperative it is that the government mean what it says.

There's a whole lot of people and organizations to be heard from. This legislation is not comparable to any other legislation in the last 10 years that deals with the Workers' Compensation Act. This isn't a mere amendment or set of amendments to the legislation. This is it. This is the final kick at the can for a whole lot of working people and injured workers in Ontario.

1610

If there's an argument proposed that lengthier hearings can't be possible because it will delay the legislative agenda of the government, I say that's simply not the case. There are approximately six weeks, I am advised, after the end of June during which the government can have this committee sit and hear presentations, both in Toronto, on the basis of eight or nine or 10 hours a day, you name it, and across the province.

Injured workers are not the only source of input into the committee. You know that, Chair. The trade union movement is not the only source of input. There is a broad range of individuals and organizations. Obviously, employers want an opportunity to provide input into the bill, both large corporate bosses as well as small businesses and entrepreneurs, and they have that right. Quite frankly, our call here today for a lengthier period of time for public hearings, we understand and we're pleased to acknowledge, is going to provide for an opportunity on the part of, let's say, employers to participate fully in the hearings.

We have no quarrel with that. We make this plea as much on their behalf as we do on behalf of workers and injured workers and injured workers' advocates and people from the field of advocacy, people from legal clinics, people from the office of the worker adviser,

people from the Workers' Compensation Appeals Tribunal and people who work for the Workers' Compensation Board currently. There is clearly a large number of people and organizations in the province that have something important and very relevant to say about the legislation.

I will underline that by repeating that this isn't merely to accommodate those people. It's to give effect to what the committee process is supposed to be all about. I can neither control nor do I make any apologies for the fact that there's already been some 1,300 requests made to provide input. All that illustrates is that this is a bill that yes, is going to require more time during the committee process than some other bills have, and that shouldn't come as any surprise to you, Chair, or to the government members.

It's a bill that, as I say, is a complete overhaul, unlike any bill dealing with workers' comp over the course of the last 10 years. It's a bill that's going to affect the lives and livelihoods and futures of enormous numbers of people and their families. It's a bill that one way or another is going to have an impact on the class of businesses and individuals who are employers. It's going to have far-reaching impact. This caucus insists that the only way even the most modest standard of fairness can be met is for this committee to recommend, as indicated in the motion, an amendment to the time allocation motion so that at least a representative group of people who have already and who will continue — and there's going to be more; I already said that. There are 1,297; there's clearly going to be more, once advertising goes out there.

One of the ways to start to address it is with the non-traditional meeting. If I said "mega-meeting," would that offend you? The mega-meeting proposal, like the one that was held at Convocation Hall, is one way to address the concerns of a large number of people in a fairly concise time frame and in a fairly efficient way. This is a sad, sad day for the committee process, to see such a paucity of time permitted for such an important and widespread bit of legislation.

I may have other comments, but I certainly want to give others an opportunity to engage in the debate.

**Mr Dominic Agostino (Hamilton East):** I certainly speak in support of the resolution that has been put forward by the member for Welland-Thorold. I think he has covered many of the points I could touch upon.

Very clearly this bill fundamentally changes the way workers' compensation operates in this province. It fundamentally affects people's lives. It really is a significant move from the way we have traditionally dealt with injured workers in this province, the process and the ability of injured workers to have fair representation and fair hearings and an opportunity to express very clearly what is happening in their lives.

I think it's important that this is not a technical change. This is not getting rid of some red tape commission somewhere or tinkering with some regulation that's 50 years out of date. The changes that have been proposed in this bill impact people's lives; real people, their families, their kids, their ability to survive. We are talking about some pretty substantial changes here and



we're talking about changes that will have a dramatic impact on people.

Difficult as it is for committee members sometimes to sit through that, I think it's important we hear from those people, because an injury in the workplace doesn't simply end and life carries on as normal. The worker may or may not get assistance. There's a real impact to an injured worker when an injury occurs. There's an impact on that person's family, there's an impact on the relationships in the family, there's emotional stress, there's physical stress, there's financial stress. I think it's important for injured workers to come to the end of the table and tell the committee what it's all about, how it feels and what they are going through.

You cannot simply exclude a whole bunch of people by saying, "We only have a few limited days and it's too bad if you don't get lucky enough to get put on the roster and get an opportunity to speak." I think we should take as long as it's going to take. I think we should give the time that is necessary to this. I believe it is very important to allow every single group or individual who wants to come forward to this committee to talk about this bill, because, folks, it's not our lives we're impacting, it's their lives. It's potentially the life of every single working man and woman in this province who may be fortunate enough today to be working and healthy and not injured. It's not only the people who are injured on the job today and who are receiving assistance of some type from workers' compensation.

This bill cannot be rushed through. At the end of the day, as Mr Kormos mentioned, you have a majority. You're going to be able to do what you want. You're going to be able to put through whatever bill you want in whatever form you want, regardless of what the opposition says, regardless of what people at the other end of the table say. You have that power and that ability in our political system.

But with that there also comes a responsibility to ensure that we give people an opportunity to express their views and their position before you make that decision. Once you listen to that, then you can make up your own mind, and you will deal with the fallout and the consequences of whatever decisions you make as a government. But to deny people that opportunity to sit at the end of the table or to be in a meeting hall and tell you their feelings on the bill — again, not only the technical part but I think the real life experiences, because that's what makes a difference, folks. We're dealing with people's lives here; we're not dealing with some absurd piece of legislation somewhere. I think it's extremely important to give that opportunity and to give people that chance to come and tell us how their lives have been affected by an injury and how their lives will be affected by changes that we propose in this legislation here today.

I think the government members will be moved and will understand if they listen to the stories. If you listen to the stories and if you listen to the injured workers at the end of the table, I think you'll see a whole different side of this issue. I just think it would be fundamentally wrong, unfair and immoral to deny people that opportunity, in view of the time allocation, in view of the fact that you have to somehow rush this bill through. Certainly our

caucus is willing to ensure that we sit wherever is necessary, whenever is necessary, however long is necessary to listen to and hear the input of everybody at the end of the table.

The reality is that different people have different access. The business community and the lobbyists on behalf of the business community, who want changes, are going to have a lot more access to this committee, particularly to the government members, than the average injured worker in this province or the unions that represent those injured workers. We've got to make up for that imbalance, and I think you make up for that imbalance to some degree by ensuring that as a committee we have a mechanism to allow us to listen to every single person who wants to make a presentation.

I cannot stress enough that it is people's lives. There are real people, their families, their kids, that this legislation is going to impact. The worst thing we can do is to try to ram something through without listening to these people, without listening to their stories, the way they've been devastated by injuries and how they're going to be devastated by some of the changes proposed in here. Unless you're afraid to face them, there's no other excuse for your not giving them an opportunity to come to the end of the table to speak.

1620

**Mr Maves:** Thank you to members opposite for their comments. This indeed is an important bill, and that's why it's important in this discussion to talk about consultation that has come before this point in time. I know our government, in opposition, for several years consulted many people about the workers' compensation system. Bill 165, which the NDP brought in, first introduced the Friedland formula into workers' compensation, and there was quite a bit of discussion at that time about the WCB system. Also, in 1995 we campaigned on a very clear agenda about renewing the Workers' Compensation Board system and restoring the financial integrity of the system so that benefits could be secured into the future for injured workers.

I'd note that the Liberal opposition during the campaign and also in their red book endorsed a lot of the policies and changes we've already brought to the workers' compensation system or that are in this bill; in fact, on November 27, 1996, Mr McGuinty endorsed the proposed legislative changes to workers' compensation. That reflects the many years of listening and consultations that the Liberal Party had also done up to that point.

I'd also note that since we became the government, Mr Jackson, the former minister responsible for workers' compensation reform, consulted with over 150 individual injured workers in a lot of different towns, mine among them. Nepean, Guelph, Woodstock, Burlington, Kitchener and Thunder Bay were also included. He also received 200 written submissions. This provided him with considerable advice which contributed to Bill 99. Since that time and the release of his document after those consultations, the Ministry of Labour has continued to meet with stakeholders and listen to what they had to say, and some things like a direct pay model of insurance and the redefining of "accident" were undertaken because of those discussions with stakeholders.

I have already stated that Bill 165, the NDP government's bill which brought in the Friedland formula, had a comparable amount of time at committee to what this bill is being given. I'd also note that at that time Bill 165 received just one day at second reading. We've already had 10 hours and four times the number of days at second reading as the previous legislation. I think that should be noted.

I have a couple of other points. These time allocation motions — the previous government had 23 of them — have become something that occurs quite often now in government, and it's somewhat unfortunate. It's very difficult to ask members of a committee to overturn something that a House leader has sent down, because there's a lot of to and fro between House leaders about which bills are going to get what time. It would be difficult for a committee to then undermine the decisions of the House leader, who has to go back and negotiate other bills for the next couple of years with the other House leaders.

There are a lot of presenters for the bills. The members all know there are always too many presenters for time slots on bills. That's a common occurrence for every government. All governments and all bills are subject to some sort of time limits; otherwise the business of the day wouldn't get done. It's unfortunate that all those who have sent in their name to appear at the hearings won't be able to be heard. They do have the opportunity to present written submissions; many people have sent in. Because this legislation was introduced November 26, 1996, they've had plenty of opportunity already to meet with their members and discuss the legislation and to send letters to talk to government members about the legislation. I've had several meetings already with people about this legislation. We didn't always agree on everything, but I've heard their concerns and comments.

Also, as with all those lists, while there were quite a few people — I'll agree with that — there were duplicates, often many people from the same organization. It's not necessarily always valuable to hear from the same organization time and time again in hearings, but to limit that.

There are a lot of opportunities for people to continue to make submissions to their members and make submissions to the government. As I said before, quite a bit of consultation has already gone on, going back to about 1992, I believe it was, and then through 1995 and 1996 with Mr Jackson's consultation tour. Even though we are limited in the number of people we're going to be able to hear and the amount of time we'll be able to spend, I wouldn't want to underestimate what goes on between House leaders, and I would re-emphasize that there has been quite a bit of consultation to date.

**The Chair:** I have Ms Martel down for discussion, but I would just mention that we are at the 4:30 point, so we might want to consider that.

**Mr Kormos:** Not me.

**The Chair:** Ms Martel, do you wish to add to the discussion?

**Ms Shelley Martel (Sudbury East):** Yes, I do, Madam Chair. First I want to respond to some of the things Mr Maves said, and then I want to add some

comments of my own, as a member who has been in this place for 10 years and has sat on some of those very substantial changes to WCB legislation, so I can probably give the government members some idea of the tradition around this place, particularly with respect to WCB.

Let me first deal with some of the comments from Mr Maves. I can't believe you would come to this committee and for one second suggest that this schedule before this committee was negotiated by the House leaders. Please. This was a time allocation motion. The government House leader decided the debate was going to end. Two weeks ago the government House leader decided what the schedule was going to be. It's unbelievable that you would come in here today and try to suggest that there was somehow lots of to-ing and fro-ing about this schedule and it was subject to some kind of negotiation. Give me a break. There was no negotiation whatsoever. Your government House leader in the time allocation motion said to the House: "Here it is, folks. Take it or leave it."

I can tell you that our House leader, who has also had a long tradition in this place, almost 20 years now, would never have agreed to 10 hours in committee, some half-days in committee while the committee sits in Toronto, and six days on the road. That's not the tradition we've established around here under different governments over the last number of years when it has come to dealing with WCB reform. Please don't insult the intelligence of committee members and the people who are here from the public today by somehow suggesting that our House leader was party to this schedule. That is just not on.

Second, Mr Maves talked about consultation, that we've somehow had all kinds of consultation around WCB reform since 1992 or 1993. Some of that needs to be clarified.

First of all, if you take a look at Bill 165, the changes we made when we were in government, no doubt we certainly did bring forward changes to the Friedland formula, and those were hotly debated by a number of folks who are in this room today. But I can also tell you that we helped about 45,000 of the most vulnerable workers by giving them increases on the small pensions they were already receiving. Our government created the bipartite board of directors, giving people a voice, not just partisan hacks on the board any more, but actually giving people who knew something about workers' compensation a significant role to play on the board of directors. We were the ones, through that bill, who established the royal commission to go out and deal with some of the broader issues around workers' compensation that did not find themselves in Bill 165.

1630

Those were the changes we made when we brought in Bill 165. They are a far cry from the gutting of the bill that you folks want to do now, a bill which, I need to remind you, takes away money from injured workers, reduces their take-home pay, for example; gets rid of the Occupational Disease Panel, which for many years has put forward studies and made recommendations to the board on how to compensate those people who suffer from industrial disease; attacks the independence of the Workers' Compensation Appeals Tribunal, a group your



government brought in in reform to the WCB in 1984-85; implements or looks to implementing changes that will completely privatize vocational rehabilitation at the Workers' Compensation Board; along with any number of really disastrous changes.

You were the folks who killed the consultation that was supposed to go on through the royal commission. It was your government that cancelled that as one of your first acts on getting into government — one of the forums that would have looked at, that indeed was looking at, any number of very long-standing and serious issues that require change. You cancelled that. The public had input. The public was meeting with the people who were dealing with the commission, making suggestions for change, and one of the first things you folks did was cancel. Then you put in Cam Jackson.

Let me tell you about Cam Jackson's exercise in Sudbury. We got a letter from Cam Jackson saying he was coming to meet with groups in Sudbury and we would be advised of the time and the date and where we could have input, and that was the last thing we ever got from Cam Jackson. We were not notified about Cam Jackson coming to talk to us about what was going on with respect to reform.

**Mr Galt:** On a point of order, Madam Chair: Not to interrupt — my apologies for that — we did have an agreement, and I believe it was even a friendly amendment that formulated that agreement, to wind up debate at 4:30. We're well past that time at this point. I think that agreement should be respected.

**The Chair:** Thank you. Can you draw to a close?

**Ms Martel:** I'm getting there, Madam Chair.

You didn't say anything in your Common Sense Revolution with respect to cutting injured workers' benefits, so how can you at all argue that somehow the people bought into your agenda and bought into your change because they voted for you and voted somehow for these terrible changes you're bringing in?

The fact of the matter is that there has been a long-standing tradition in this House that when we deal with workers' compensation changes we allow the public to have some input, to have some say. What you are offering here is an insult, is a sham, is a slap in the face. For goodness' sake, take a look at Bill 165, which Mr Maves wanted to talk about. He neglected to mention that Bill 165 had three full weeks of public hearings on the road. The debate on second reading was a midnight sitting. Everyone who got that up and spoke had a chance to speak. The Tories didn't put up any more speakers on Bill 165 and that debate ended in a single sitting, but a midnight sitting.

We are here today looking at a schedule that is less than what we had when we had the last major change around workers' compensation, when I was the critic for the NDP in 1989-90. We had at that time, under Bill 162, 37 days in committee, 11 hearing days in Toronto, 15 days on clause-by-clause, 11 days on the road. We had one full session for injured workers at Convocation Hall. What you are offering today is a slap in the face to those thousands and thousands and thousands of injured workers whose very lives, whose very pension, whose very pay, whose very livelihood and whose families are

going to be dependent upon what they can receive when they get hurt or what they receive as a pension. Surely that must have some impact on all of you.

You cannot say we've had lots of consultation. What is reflected in Bill 99 is a complete departure from what was represented in Bill 165. It's a significant change in terms of the traditional agreements that were made in 1914 when this bill was put into place. It certainly has nothing to do with what you talked about in the Common Sense Revolution, because you didn't talk about cutting people's benefits and cutting their pensions, and that's what you're doing with this bill.

The tradition in this place has been to allow significant numbers of people to come and have their say on a bill which impacts on their livelihood. This is not just a minor change in their quality of life or a minor change in their day-to-day activity; what we do here with respect to workers' compensation, benefits and entitlement has a serious and dramatic impact on thousands of people who have already been hurt and thousands more who will.

I have to say to the committee that you have got to reverse your position with respect to the decision and to the schedule that's before us. It is not a schedule which is agreed upon by the House leaders; it was a schedule that has been put to us by the government House leader. It in no way, shape or form allows for the hundreds and hundreds of people who should have their say to have their say, and we have got to change that, if for nothing else than to reflect the fine tradition that has been established in this place with respect to how all parties and all governments have dealt with WCB reform in Ontario.

**The Chair:** Mr Kormos has a motion on the floor. Is there any further discussion? We agreed to about 4:30. We're passed that now. Can we take a vote on that?

**Mr Kormos:** A recorded vote, please.

**Ayes**

Agostino, Hoy, Kormos, Martel.

**Nays**

Chudleigh, Galt, Jordan, Maves, O'Toole, Ouellette.

**The Chair:** The motion is lost.

We move now to the report of the subcommittee of the standing committee on resources development number two. Any discussion on this subcommittee report, please?

**Mr Kormos:** Has it been moved?

**The Chair:** Oh, sorry, you're right. Could I ask for a motion, please, for this to be moved?

**Mr Maves:** I move that we accept it.

**The Chair:** Any discussion?

**Mr Kormos:** It indicates that a technical briefing by the ministry is not required. I suspect that's not so much because the bill isn't highly technical but because the subcommittee is acknowledging there's not sufficient time allotted for the committee hearings to entail, and Ms Martel quite rightly spoke of tradition and practice, what is usually — I suppose a technical briefing by the ministry isn't required if the government members really don't want to know what's in the bill and have no intention of understanding what's in the bill and are

going to vote on it like the little trained seals they are simply on the instructions from their whip and/or leader.

I also have great concern about number 7: "Notice of the public hearings will be placed on the Ont.Parl network. It will invite groups or individuals to submit written briefs to the committee." My problem is that this is the only reference to notice in the whole report of the subcommittee. This is an elitist and quite frankly stupid suggestion. It implies that people have universal access to the Ontario parliamentary network. You know or ought to know that you've got access to the Ontario parliamentary network if you have cable television, if you're one of Ted Rogers's hostages. There are vast portions of this province where cable television isn't a reality and there are larger numbers of people throughout the province for whom cable television is a luxury beyond their ability to pay.

This smacks, and it's starting to get clearer and clearer here, that for this government gaggle on this committee there's no interest in public hearings. Indeed it appears they don't really want public hearings at all. When I recall what Mr Maves had to say about the earlier motion, during the discussion of the report of the subcommittee number one, it's clear that he really doesn't think public hearings are essential at all and that the only reason he's holding any is to create an impression of consultation.

The fact that government members would not want a technical briefing, that it's not required — horsefeathers. The fact that notice is only going to go out on the Ontario parliamentary network to a segment of the Ontario community that has cable television confirms that hearings aren't really desired. I understand the 20-minute time slots. That was a concession made by opposition in an effort to accommodate as many people as possible, and I reluctantly would agree to 20-minute time slots.

I'm going to tell the government committee members something in just a minute, but before I tell them that, it's clear that not a single member of the government caucus on this committee has the guts or the gonads to speak up for their constituents in terms of acknowledging that the government bosses here have shortchanged the public. I understand people being bought; what amazes me is that they can be bought for so little.

I suppose the treatment of Toni Skarica, Gary Carr and Bill Murdoch was supposed to be some sort of lesson for government backbenchers. It was Bill Murdoch who said, "You've got to kiss ass if you're going to get anywhere here." I suppose it's —

**1640**  
**Mr John O'Toole (Durham East):** What did they do to you? How did the picture go, Peter?

**Mr Chudleigh:** I think the language is out of order.

**Interjections.**

**The Chair:** Order, please. Mr Kormos, kindly keep your language as a fine parliamentarian should.

**Mr Kormos:** As I pointed out, neither the guts nor the gonads nor the brains, as Mr O'Toole is now demonstrating, to effectively want to stand up and speak out.

I understand what happened to Mr Skarica and Mr Murdoch —

**The Chair:** Mr Kormos, could you limit your remarks to the subcommittee, please, briefly?

**Mr Kormos:** Yes. I'm calling upon one, maybe two, maybe three government members to honour the responsibility they have to their constituents, to place their constituents' interests above and beyond theirs, to put their constituents' interests first rather than their own. Such a dramatic display of self-interest has never been witnessed in this Legislature when government backbenchers, given an opportunity, as they are today — I understand they got marching orders not to support the motion we moved pursuant to subcommittee report one. Now they've got an opportunity to be recognized as a member who places their constituents' interests before their own.

If "kissing ass" offended anybody, don't shoot the messenger. It was Bill Murdoch, their colleague, who suggested that's what was important if you were going to make it around here. So don't shoot the messenger, please, Chair. I'm only quoting the honourable member for Grey-Owen Sound, who I quite frankly have some regard for because Billy Murdoch is prepared to speak out for his constituents and has demonstrated that. Gary Carr is prepared to speak out for his constituents and to hold, with regard, the trust that's been placed in him. Toni Skarica is prepared to speak out. They may not have parliamentary assistants' jobs, they may not get on any junkets to New York City like Mr Wood and Mr Flaherty and — who is the other member of that unholy trio?

**Interjection:** Mr Brown.

**Mr Kormos:** Mr Brown.

**The Chair:** Mr Kormos, if I may, please —

**Mr Kormos:** No, I didn't go to New York, Chair.

**The Chair:** Could you please confine your remarks to comments on the subcommittee report? I do request it.

**Mr Kormos:** I'm exhorting government members to vote against this report and I'm doing so in as broad a way as I can. As I say, I understand the fear of the government members, I really do. I understand that fear. Mr O'Toole makes reference to the consequences I received for sticking up for my constituents rather than puckering up and following marching orders. Well, I'm proud of having done that.

**Mr O'Toole:** They've been laughing at you ever since.

**Mr Kormos:** I don't regret having done it. My constituents are proud of my having done it. I believe they expressed that in 1995. That's why I have such empathy for Toni Skarica and Gary Carr and Bill Murdoch, because they can't be bought for a crummy Vice-Chair or a Chair or a PA position. They're prepared to fulfil their commitment to their constituents.

I'm asking three of these government backbenchers to do the same. I'm asking them to recognize that they have a responsibility here, in the first instance to the almost 1,300 individuals and organizations that have requested standing before this committee, and secondly to what I'm sure will be hundreds more to come. By rejecting this recommendation of the subcommittee, they can demonstrate respect for those persons wanting to participate.

I'll tell you this: This government's going to have a rocky, rough ride like it ain't seen if it proposes to embark on these hearings without some accommodation



for the hundreds, well in excess now of 1,300 individuals and groups that seek status. This government ain't seen nothing the likes of what it's going to witness. Most of them weren't here, no, none of those people sitting in that little gaggle were here last time injured workers felt frustrated and were persuaded to leave the second floor of the assembly by the leader of the New Democrats.

I'm not sure the leader of the New Democratic Party this time is going to be as accommodating and generous to the government as the leader then was. This government is inviting, creating a confrontation between some of the most damaged, injured people in our province, people who have borne on their backs and with their shattered and broken limbs the consequences of unsafe workplaces and workplace injuries, the families of those who have died.

It's picking a fight. So be it. If it insists on picking this fight like the proverbial school yard bully, like the Goliath it wants to be, it will find itself struck down as the school yard bully, inevitably a coward, always is, and like Goliath, ever confident, always is by the young Davids.

I find it amazing that this government and its backbenchers, although they've only been here two years, haven't in those two years acquired any sense of understanding about what committee work is. We know that what happens in the House is rarely overly democratic, because we've got people really following marching orders, government members not participating in debate because they don't want people to know where they stand on particular bits of legislation, government members voting as told and following orders, rather than listening to their constituents or responding to their own understanding of a bit of legislation.

The public doesn't have access to the floor of the chamber; the public only has access through the course of committees. Committees are integral to the most basic or modest sense of democracy. This government has no regard for even that. I find it deplorable that these committee members from the government side are willing to simply do the bidding of their backroom gang. I find it not just cynical but a total betrayal of the responsibilities that an elected member has imposed on them when they accept the support of their community sending them here to Queen's Park.

1650

This is an unfortunate and sad day for this committee and for the government. It wants to beat up on injured workers. Let me tell you something: Injured workers may be using canes and crutches and may be in wheelchairs and from time to time even on gurneys, but I have known injured workers and their representatives, Phil Biggin and Karl Crevar and so many others across this province who have for decades, with great perseverance and with great personal sacrifice, led the cause and advocated on behalf of injured workers to try to overcome the injustices that injured workers have had imposed on them.

Let me tell you, there's going to be a lot of government members just quite frankly wetting their pants at the confrontation they're going to invite. The attitude here is one which is so undemocratic. I've got to tell you, I was over at the Croatian National Home in Welland on Friday

night. One of the old Croats came to me and explained to me that he had lived under Fascist regimes, he had lived under totalitarian Communist regimes and he ain't seen nothing like this government. I wouldn't dare to make that comparison, because I've had to live under neither. But here's an old gentleman who has and he, in Croatia, as I say, endured Fascism, Nazism and Communist totalitarianism. He shakes his head as he observes this government with their disdain for democracy and public input. He says he ain't ever seen nothing like it.

**The Chair:** Mr Kormos, do you have any particular points that you want to refer to, to the subcommittee report?

**Mr Kormos:** Oh, yes, ma'am. But I understand that other people may want to participate in the debate, and in the interests of time and to accommodate those people, I'll — what the heck is this? That's nuts. "People sought constituent meetings with their Tory MPP." It appears that some information I've received is that government backbenchers haven't been as generous with injured workers as they claim to have been, that there is any number of injured workers and their groups who haven't been granted audiences with their Tory backbenchers.

This is like a dance in the fog. If we can't get straight lines, if we're confronted with distortions, it makes the debate all the more difficult. I say, "Shame." I know Ms Martel wanted to speak to the subcommittee report, and one of my friends from the Liberal caucus.

**Mr Agostino:** I am concerned with some of the process that's been used as well, particularly the provision for notices. I think it's important, as was mentioned previously by my colleague, the fact that you are only advertising through the parliamentary network is in many ways excluding a lot of people. I would like to see this committee agree to an amendment that would allow advertising to occur in the daily newspapers as well as the community papers across this province. It would make some sense to give people greater access to the committee hearings by notifying them of committee hearings.

My own riding of Hamilton East probably has the largest or one of the three largest percentages of injured workers across Ontario. My office deals with many, many injured workers on a daily basis and I know they are concerned about what is happening. Certainly through some offices, such as mine and other members' here, we can notify individuals we deal with of that, but there are many other folks who don't come into an MPP's office, who don't watch the Ontario parliamentary network, who might want to have access to this, so I think simply at least extending some goodwill in the process by advertising in community newspapers —

**The Chair:** If I may interrupt, excuse me, Mr Agostino, number 7, which I think is what you're referring to — at the subcommittee meeting, this was discussed only in relation to the committee hearings that would be held in Toronto. None of these was in consideration of the hearings that would be held throughout the province.

**Mr Agostino:** Okay, the same thing. I think the same principle can apply and if we can extend the advertisement to the dailies and the community newspapers that exist in this town and in other cities or towns that the

committee travels to, I think that would certainly help many injured workers have access to this committee. As I said earlier, we can't stress enough the importance of this issue and we can't stress enough the access of the public to this committee. Whether members agree or disagree with what has been said at the end of the table, I think we have a responsibility to inform people that it's happening, to inform people that they have an opportunity to come forward, and to give them that opportunity.

I would like to see us do that and certainly to ensure that we place advertisements beyond the parliamentary network in order to give people that fair opportunity to appear before this committee. I think it's important also to look at some of the community papers, the ethnic papers that exist across various parts of this province, to use them as a tool to reach people who are going to be impacted by this legislation.

**Ms Martel:** I'm looking at the proposal that's before us and I ask members who have already voted down allowing having more hearings to take a serious look at what they have just voted on. Point number 5 says that witnesses will be scheduled for 20-minute time slots. I notice that nowhere else in the note does it talk about how long the committee is going to sit.

The four days in Toronto: We can assume the committee is going to sit from 3:30 till 6, which will allow us a grand total of 28 presentations being made in the four days the committee sits in Toronto — a grand total of 28 presentations.

I'm going to assume, rightly or wrongly, that the next six days will actually be full hearing days because they will be out on the road, out of this place, so we're looking at a potential schedule of sitting from 10 in the morning till 12 noon and again from 2 until 5. That allows us to have another grand total of 90 presenters over those six days out on the road. In total, if we're being generous, this committee is going to hear from 118 people, organizations, businesses, legal clinics, etc — a grand total of 118.

Right now, before this committee has even advertised its public hearings, we have 1,297 folks who have requested to have standing before this committee to express their concerns with respect to this bill. We're going to hear from 118 of them if the committee is generous, less than 10% of the people who wanted to have input, wanted to have some say on a bill that for many of them is going to dramatically affect their lives, their livelihood, their ability to support their families, their ability to live with some kind of decent standard of living on their pension after they are hurt and cannot return to work.

That's what this committee — I shouldn't say "this committee," because the opposition didn't vote — that's what the government members, the majority on this committee voted for. Perhaps we'll hear from 118 people in the 10-day time frame. It's not even 10 days, because four of those are two-and-a-half-hour sittings in the late afternoon.

That's what we're giving to the public of Ontario. Doesn't that make any of you want to think again? Doesn't that jig your conscience just a little bit, that that's what you've agreed to, that that's the position we

find ourselves in, that that's the offering we're going to give to the thousands and thousands of people out there whose lives are going to be so dramatically affected by the gutting of the Workers' Compensation Act and by the gutting of benefits that they are now entitled to? Shame on the government members.

For goodness sake, not only have you just sloughed off all of the many years of tradition in this House, tradition where we have allowed for extensive public hearing for WCB reform, but you've just slapped in the face well over 1,000 people who have already asked to be heard. You have just slammed the door in their faces, never mind the hundreds of others who would have responded to an appeal in the paper or on TV or anything else in order to have their say. I don't know how this committee is going to deal with who gets chosen. It's going to be a joke.

I just say shame on the government members. You couldn't care less about injured workers. You couldn't care less about what's going to happen to them. That is clearly displayed in the destructive and cavalier manner in which you have dealt with public hearings on this very important piece of legislation and the ability of these people to have their say.

1700

**The Chair:** Further discussion? Seeing none, Mr Maves has moved the subcommittee report from June 5.

**Mr Kormos:** Recorded vote, please.

*Interjection.*

**The Chair:** It's been brought to my attention, committee members, that Mr Agostino is in the process of writing an amendment. I see that he's left the room. Shall we wait a moment for him to return, or shall we move forward with the vote? What is the wish of the committee?

**Mr Maves:** I don't mind waiting.

**Mr Galt:** Did he indicate how long he would be?

**The Chair:** No.

**Mr O'Toole:** He's on the phone outside.

**The Chair:** He's on the phone. Mr Hoy, do you have any advice for us in this regard?

**Mr Pat Hoy (Essex-Kent):** I can't speak for Mr Agostino, but in his last conversation about this subcommittee report he had a concern about having a public hearing notice placed only on the Ontario parliamentary network. So that may be exactly what he has in mind.

**The Chair:** Mr Agostino, it was brought to my attention that you were working on an amendment. Is that correct?

**Mr Agostino:** Yes, that is right. I'll read that, if that's acceptable.

**The Chair:** All right. Members, there is an amendment being read.

**Mr Agostino:** That the notice of public hearings be placed in major daily newspapers and community papers across Ontario where the public hearings will take place, in addition to what is here.

**The Chair:** Okay, May I ask, this would be specifically for the Toronto hearings to begin next week?

**Mr Agostino:** Toronto, and then obviously the committee would have to deal — we could do an amendment at that point if it's appropriate. My understanding is that



all this in front of us refers to the Toronto hearings. Is that correct?

**The Chair:** That's correct. It's my understanding.

**Mr Agostino:** The notice of public hearings then would be placed in major daily newspapers and community papers in Toronto where the hearings are to take place and, if we can recommend, in the other communities where the hearings will take place in the future outside of Toronto.

**The Chair:** Any discussion?

**Mr Maves:** If I can speak to that, tomorrow the three parties are to submit lists of witnesses, so if we try to place an ad in the Toronto papers about hearings, saying, "If you want to come before us and appear in the hearings," the ad would come in after the deadline. So for Toronto it doesn't really make sense. For the other cities it's fine, but I think that would go better in the subcommittee's report when we come back with the full subcommittee report on those other cities.

**The Chair:** Further discussion?

**Mr Maves:** Part 4, Dominic. It would be impossible to get the ad in to appear before hearings in Toronto. For written submissions, it's fine.

**Mr Agostino:** Part of the problem is that we were hoping to get an extension on the number of people we can listen to, which obviously was not agreed to. Very clearly, we're still hoping that the committee will somewhere along the line look at the list of people who have submitted a request. Frankly, if the deadline was so tight, with June 10 being the time, and this committee sitting here today, on June 9 and agreeing to a process that has a deadline of tomorrow, it doesn't make a whole lot of sense that we're even doing this at this time to any great degree, which I think is somewhat of a ridiculous process we're using. Very clearly, it is not in line with the Toronto hearings as a result of the fact that the deadline is tomorrow — that's what I've been told — at 4 o'clock for anybody to come forward through the clerk.

**The Chair:** That's what you have before you.

**Mr Agostino:** That's our witnesses to the clerk. That's the ones from each caucus. For the general public, though, through the clerk, is tomorrow the deadline as well?

**The Chair:** My understanding is that there's no deadline set.

**Mr Agostino:** Okay. Therefore there would still be the opportunity, if I can just ask a point of process, not the merits of it, for people from the public to continue beyond tomorrow at 4 o'clock to make requests to appear before the committee.

**Mr Maves:** But, Dominic, they're not going to get on, because all three caucuses are submitting their lists for Toronto tomorrow. The likelihood that any of them are going to get on is slim to none; there would have to be a cancellation, and one caucus would have to put that person on there. It's fine for written submissions, an ad for a Toronto paper for written submissions, but not really for hearings. As far as the other cities go, Richard and I and David left that discussion for later.

**Mr Agostino:** As an amendment to that, if we can add then "put an ad in the paper to give people an opportunity to submit written submissions for the Toronto hearings

and recommend to the subcommittee that they place ads in the daily and community newspapers across Ontario where the hearings will take place."

**Mr Maves:** I have no problem with that except for the fact that I just think that would fit better in the subcommittee report subsequent to this that's going to deal with those other cities.

**Mr Agostino:** But if the committee as a whole expressed that will, my belief is that the subcommittee will agree to it. Frankly, if this committee says to the subcommittee, "Here's what we'd like you to do," I would think you will take that direction very heavily into consideration.

**Mr Maves:** I can give you my undertaking —

**Mr Agostino:** I'm not trying to be difficult; I just think it's important to try to open up the floor.

**Mr Maves:** I realize that. As a member of the subcommittee from the government side, I undertake that I would agree to those ads and I know that Mr Patten would. We've already discussed that. That's at least two of the three members of the subcommittee who have already said, "We're going to agree to that." I'll tell you now that I'll agree to advertise for those hearings in those communities.

**Mr Agostino:** Would it be okay, then, Madam Chair, if we can allow for ads to be placed to receive written submissions on the bill in the city of Toronto and Metropolitan Toronto in daily newspapers and community papers and then to suggest to the subcommittee — if not direct, because I've had the undertaking from Mr Maves — that they would also consider that the ads be placed in communities across Ontario where we are going to be holding public hearings?

**The Chair:** Okay. If I may make a comment, my suggestion might be, if the committee is willing to submit the ads, that perhaps we stick to the two large dailies then, because the expense would be quite, I would think, extensive in getting into the community newspapers. Ms Martel, did you have a comment?

**Ms Martel:** Yes, I do. I have some real problem that we will do one thing in some parts of the province and we'll do something else in Toronto. I don't usually defend Toronto, because I'm from northern Ontario, but I'm going to defend Toronto today. Why are we trying to cater to the government agenda? This is ridiculous. We have boxed ourselves into a position where we can't even advertise for public hearings on this bill now because the government has got to get this thing under way ASAP? That's ridiculous. How can you even go out and tell people you're going to have public hearings when we don't even have enough time now to allow an ad to be placed in the dailies in Toronto so that people can write in and ask to get on? That's crazy.

What kind of process is this? You can't believe this is a fair process at all. What's wrong with the government members? For goodness' sake, you can't have one set of rules for people who live in Toronto, who can get an ad saying, "Send in your written submission and we'll look at it later," and then tell the folks in the other six areas — God knows where they're going to be yet — that they can come and make submissions. That's ridiculous. We can't have the committee start to act like that or

deal with the public in that way. It's wrong and it's unfair.

Frankly, if that's the bind we find ourselves in, then the government members should be going back to the government House leader and saying, "We can't organize this in time to allow people to have proper notification and to allow them to have some say." That's what you should be saying back to the government House leader. You shouldn't be in here today trying to say, "We'll do one thing in Toronto and one thing somewhere else because our time lines are now so restricted."

1710

**Mr O'Toole:** As a member of this committee, I would ask the question perhaps of the clerk of the committee, what is the normal procedure for notice period and what are the policies with respect to advertising? I'm not sure that members of this committee would suggest, Mr Agostino, that we take it upon ourselves to do something unique. I'm certain this is all laid down in policy long before it gets here. Could I have the clerk respond or at least tell me if there is a policy on this?

**Clerk of the Committee:** There are no normal procedures or policies with respect to advertising. Each subcommittee and committee decides what they would like to do based on the issue that's before them. Perhaps some of the subcommittee members can refer to some of the issues that were discussed with respect to the numbers that the committee already had before them.

**Mr O'Toole:** I guess that's the second part of the point I'm trying to make. If you take the number of days, and they sit eight hours a day, I think that comes out to 144 members on the road that we will be able to see, and from having sat on this committee before, I'll bet you that the NDP caucus has a list numbering in excess of 144 already, each one of whom will be probably representative of the Steelworkers, the United Auto Workers, the various associations. Their leadership will have a position, and we'll hear that position in every single town, the same position, in fact word for word, with the exception of the beginning of the preamble to say, "The members of Local XYZ make this petition," and it will be word for word right from Buzz Hargrove or whoever the leader is, Gord Wilson or whoever.

*Interruption.*

**Mr O'Toole:** The injured workers should be represented. I'm sure —

*Interruption.*

**The Chair:** Order, please. With all respect, I remind those who are here viewing the committee today that we must follow the same rules as in the House. This is a committee meeting.

**Mr O'Toole:** I'm not a member of the subcommittee, so to conclude without using a lot more time here, it appears from what the clerk has said that members of the subcommittee did discuss this issue, and I leave it to them. There were representations from all three parties there at the subcommittee level, so I guess they decided not to.

**Mr Agostino:** I think this thing is receiving more debate than it should be. We're talking about giving the public notice. I take exception to the comments of Mr O'Toole somehow questioning the motives of representa-

tives of injured workers or of injured workers and suggesting that they are all going to come forward with the same pitch. That's part of the attitude problem he has. Injured workers are not all the same.

Yes, there are positions represented by locals that represent those workers. That's what they're there to do. Unions and representatives of injured workers have a responsibility and a job to represent those men and women who work there and who are injured on the job and have some problems and difficulties to deal with, and that is exactly what they do. You don't listen to one and then tune out on the rest because you assume it's all the same, and that was one of the points we made earlier as to why these hearings should be extended, for God's sake: to give people an opportunity. Because each case, each story, each circumstance of each injured worker and the impact this is having on them is different.

I ask members to understand the severity and the impact of what we're dealing with here, because if you try to short-circuit the process, you're going to invite anger, reaction and violence. Allow people that opportunity. You cannot short-circuit this process, because you're really fundamentally impacting people's lives in a very severe way here. To try to somehow short-circuit this or ignore them as all being the same and all with one view represented is a grave injustice to injured workers across this province. I really take great exception to that approach and that attitude that these things are somehow all preplanned and stacked and every single person who comes forward has the same speech in front of him except one line that is different.

I would ask these members to go out and talk to a few injured workers, and maybe you'll get a different perspective, a different picture than the one that has been presented today. I agree, I think this thing has got to be consistent. I would really like to see us have an opportunity to give every single injured worker an opportunity to come forward and let them know about it through the advertising in the newspapers, both the large and community papers, and not just assume they are all a bunch of trained seals who are going to say the same damned thing.

**The Chair:** Mr Agostino has an amendment on the floor. Any further discussion?

**Mr Maves:** I'm sorry, Chair, but I'm no longer clear if he has withdrawn parts of the amendment, amended the amendment —

**Mr Agostino:** In view of what's been said, I believe we should be consistent. The motion will be that the notice of public hearings be placed in major newspapers and community papers across Ontario where the hearings are being held, including Toronto.

**The Chair:** Would you like that read once more?

**Mr Maves:** Yes. I don't think I could support it worded that way, but would you read it one more time so the committee can be clear on it?

**The Chair:** Okay. You've changed it.

**Mr Agostino:** I wrote it out here. If you'll give me the original one, I scrambled here and rewrote it. Give me what you have there. The motion is that the notice of public hearings be placed in major daily newspapers and



community papers in the community where the hearings will take place.

**Interjection:** Including Toronto?

**The Chair:** It's open-ended.

**Mr Agostino:** Toronto is one of the communities.

**The Chair:** Further discussion?

**Mr Maves:** I can't support that motion but will give my undertaking to Mr Agostino that during subcommittee deliberations about the cities that we're going to go to in the future, I will agree to advertise in major dailies in those cities we're going to. That's my only comment.

**Ms Martel:** Can I just ask why the government can't support this notice for advertisements in the daily papers in Toronto on a bill of this magnitude?

**Mr Maves:** I can't speak for all the government members. I can speak for myself in that tomorrow is the deadline, at 4 o'clock, for names of witnesses to be put on the list to testify in Toronto. You're not even going to get an ad in the paper until Thursday for hearings, so it would be a frivolous ad to put in the paper.

One of the reasons Mr Patten and I agreed on this was that there were already 500 people. Because the bill has been out there since November 1996, most of them were people who have been waiting for the hearings to be announced. They immediately sent in their names. A lot of the people who already deal with workers' compensation — injured workers associations and many of the major unions — had already submitted their names. As Mr Kormos said, there were over 500. We were confident that we could call the witnesses for the Toronto area from that list. That's why I can't support that, because it wouldn't be worthwhile to now do it for Toronto, but it would be for the major dailies in the other communities.

I'll vote against the motion but I'll let Mr Agostino know that I will undertake to do that in subcommittee.

**Ms Martel:** This will come back to haunt you. You're making a huge mistake by proceeding down this path. I have seen workers' compensation amendments before and I've seen the demos. You do this at your peril by not advertising adequately and by not allowing enough public hearings. I warn you now. It's a crazy way to proceed.

**The Chair:** Shall we take a vote on Mr Agostino's amendment then?

**Ms Martel:** Recorded vote.

**Ayes**

Agostino, Hoy, Martel.

**Nays**

Chudleigh, Galt, Hastings, Maves, O'Toole, Ouellette.

**The Chair:** The motion is lost.

We move then to the report of the subcommittee. This is subcommittee report number two.

**Ms Martel:** Recorded vote.

**Ayes**

Chudleigh, Galt, Hastings, Maves, O'Toole, Ouellette.

**Nays**

Agostino, Hoy, Martel.

**The Chair:** The subcommittee report carries.

Seeing no further business, we'll adjourn for today. Thank you, everyone.

*The committee adjourned at 1719.*





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## Legislative Assembly of Ontario

First Session, 36th Parliament

## Assemblée législative de l'Ontario

Première session, 36<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 16 June 1997

# Journal des débats (Hansard)

Lundi 16 juin 1997

**Standing committee on  
resources development**

**Comité permanent du  
développement des ressources**

Workers' Compensation  
Reform Act, 1996

Loi de 1996 portant réforme de  
la Loi sur les accidents du travail



Chair: Brenda Elliott  
Clerk: Donna Bryce

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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
RESOURCES DEVELOPMENT

Monday 16 June 1997

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU  
DÉVELOPPEMENT DES RESSOURCES

Lundi 16 juin 1997

*The committee met at 1531 in committee room 1.*WORKERS' COMPENSATION  
REFORM ACT, 1996LOI DE 1996  
PORTANT RÉFORME DE LA LOI  
SUR LES ACCIDENTS DU TRAVAIL

Consideration of Bill 99, An Act to secure the financial stability of the compensation system for injured workers, to promote the prevention of injury and disease in Ontario workplaces and to revise the Workers' Compensation Act and make related amendments to other Acts / Projet de loi 99, Loi assurant la stabilité financière du régime d'indemnisation des travailleurs blessés, favorisant la prévention des lésions et des maladies dans les lieux de travail en Ontario et révisant la Loi sur les accidents du travail et apportant des modifications connexes à d'autres lois.

**The Chair (Mrs Brenda Elliott):** Good afternoon, everyone. Welcome, ladies and gentlemen, members of the committee. This is the first hearing of the standing committee on resources development for consideration of Bill 99. If everyone is settled, we welcome those not only in this room today but in the adjoining rooms who are listening to the proceedings this afternoon.

For those of you who are new and haven't been to a standing committee before, I'd like to just take a moment to explain to you how this works and what it's all about. This is a standing committee of the Legislature and as such we're governed by the same rules. Just as in the Legislature, in the House itself, we very much welcome guests, we do also in our committee hearings. But just as in the House itself, demonstrations or applause is not permitted. This is committee work and we would very much appreciate your cooperation in abiding by the rules. This is an important issue for us, so that presenters are given the opportunity to make a presentation without interference and with a maximum of courtesy. With that, we welcome you all.

STATEMENT BY THE MINISTER  
AND RESPONSES

**The Chair:** Our first presenter this afternoon is the Minister of Labour. We're very pleased to have the Honourable Elizabeth Witmer join us. She will have 20 minutes for her presentation, and this will be followed by 10 minutes from both the official opposition, Mr Patten, and the third party, Mr Christopherson. Welcome, Minister.

**Hon Elizabeth Witmer (Minister of Labour):** Thank you very much, Madam Chair, members of the com-

mittee. I certainly appreciate the opportunity to be here today. The deliberations upon which you are about to embark are a very important milestone in the reform of the Ontario workers' compensation system, and I certainly want to commend you and wish you well as you undertake the very important task ahead of you.

Bill 99 is the final step in the complete overhaul of the Workers' Compensation Board. It is based on years of hard work and effort by countless groups and individuals who have been concerned for many years by the problems they were seeing at the board. Certainly as the critic for labour for five years prior to 1995, I witnessed at first hand the problems at the board and the many attempts at reform. By the time our government took office two years ago this month, we were faced with several challenges.

The unfunded liability was projected to reach over \$18 billion by the year 2014 if no action was taken. Obviously this was going to further jeopardize benefits in the future for injured workers.

The unfunded liability represented three times the unfunded liabilities of all the other provinces combined. As you probably know, other provinces in Canada have been attempting to eliminate their unfunded liabilities.

Even though accident frequency was declining, which is a good thing, employer assessment rates were \$3 per \$100 of payroll. We were second only to Newfoundland, and obviously this created a disincentive to job creation and investment.

Our high unfunded liability meant that when employers were hiring new employees, they became responsible for \$4,000 of the unfunded liability every time they hired a new individual.

We also heard about a system that was focusing on compensation with little or no regard for the prevention of illness and injury, and certainly we knew that this had to change.

Despite the fact that we were spending hundreds of millions of dollars every year on vocational rehabilitation and other programs, the system was doing a very, very poor job of returning injured workers to work in a safe and a timely manner.

Therefore, it was necessary to take immediate action.

We began with Bill 15 when we replaced the bipartite board with a multistakeholder structure. We instituted value-for-money audits to make the board more accountable. We strengthened the board's ability to combat fraud, and of course when we talk about fraud, we talk about employer, employee, supplier and internal fraud. We also appointed a new chair, a new president and a new board of directors.



The board saw to it that our commitment to lower the average employer assessment rates by 5% was fulfilled, so today in the province of Ontario we have the lowest assessment rates that we have had in 10 years.

The new board has also announced a new organizational structure and it is building a new culture that focuses on better service delivery and improved relations with injured workers and employers.

Finally, in November 1996, we took the final step in the overhaul by introducing the Workplace Safety and Insurance Act.

The existing legislation was first introduced in 1914. Unfortunately, the act was out of date so we have completely rewritten the act using contemporary language to reflect the modern workplace and to make it more understandable and user-friendly for injured workers and employers and others who use the system.

If we look at Bill 99, it is based on five principles.

First, we will restore the financial viability of the board by eliminating the unfunded liability by the year 2014.

As I mentioned before, this is consistent with the objective of WCBs throughout Canada. We are keeping our commitment to adjust benefit levels from the current 90% of pre-injury net earnings to 85%. Again, we are doing what has already happened in New Brunswick, Nova Scotia, Manitoba and Newfoundland where similar adjustments have been made. In fact, in New Brunswick benefit levels start at 75%.

Inflation protection is being adjusted, as it was with the previous NDP government, but the 100% disabled and the survivors of deceased injured workers are not affected by this adjustment.

At the same time as we have proposed measures on the benefit side, we are taking steps on the revenue side to ensure that all employers pay their fair share. This has been neglected in the past.

Currently, some companies are able to move into Ontario temporarily and they can leave with outstanding WCB premiums. Other employers can reorganize their businesses to avoid outstanding WCB debts. This is unfair, because it forces honest companies to bear more than their fair share of the burden.

Under Bill 99, this would no longer happen. For, when circumstances require, the board would be able to levy assessments against employers as security to recover any unpaid debts. When necessary, the board would be able to hold a purchaser liable for the debts of the previous employer.

So, be it on the benefit or the revenue side, we are ensuring that our financial reforms are balanced, fair and effective and still result in injured workers receiving among the most generous benefits in North America.

The second principle of our reforms is to restore the system to its original mandate as a workplace accident insurance plan.

In past years compensation has been paid for conditions whose connection to the workplace is often difficult to determine. Therefore, it is now proposed that compensation be provided for stress when it results from a traumatic workplace incident.

Similarly, it is proposed that compensation for chronic pain be limited to the normal healing time. The draft regulation defining normal healing time is available.

As well, we are refocusing occupational injury and disease research, as other provinces have done, and we are integrating it within our WCB as is done in every other province in Canada. We are also refocusing the offices of the worker and employer adviser and the WCAT so that all parts of the system are working towards the same goal, the goal being to make workplaces in this province among the safest in the world.

#### 1540

The third principle of our reforms is to do a much better job returning injured workers to work in a safe and timely manner. When I meet with injured workers that is the one request they have. They want to be back at work, but we need to make sure it happens in a safe manner and also in a more timely manner.

Therefore, Bill 99 will establish an entirely new return-to-work strategy that emphasizes the need for the workplace parties to establish and maintain contact after the injury and endeavour to return the injured worker to work as safely and quickly as possible.

However, if an injured worker is unable to return to work with the pre-injury employer, there may be a need for a labour market re-entry plan so that the injured worker can be fully prepared to re-enter the workforce at a level of earnings consistent with his or her pre-injury situation. The board would be responsible for the development of the plan with the injured worker and, where appropriate, the employer and the attending health professional.

But the return-to-work process requires more than cooperation. It's going to require information on which to base sound decisions. That is why an injured worker would be required to consent to the release of functional abilities information to the employer as part of their application for benefits.

I want to emphasize that functional abilities information will describe only what an injured worker can and cannot do. It is not, and I stress, confidential health information. A one-page form has been developed by the WCB and it is available in draft form today for all members of the committee.

The fourth principle governing our reforms is increased self-reliance. This is a principle we have tried to reflect in all the initiatives we are undertaking at the Ministry of Labour.

We recognize that the workplace parties are in the best position to prevent injury and illness and to manage the consequences of injuries and illnesses when they do occur.

Therefore, our proposals encourage employees and employers to assume more responsibility for their own health and safety. We also recognize that the board's role needs to change, to be more of a facilitator: monitoring, mediating and resolving disputes where necessary.

Notwithstanding this emphasis on increased self-reliance, a failure to cooperate in the return to work or labour market re-entry process could result in penalties for either party. These penalties need to be there to ensure compliance, as does a strong enforcement presence.

In fact, our health and safety inspections are increasing regularly and they are projected to increase 46% this fiscal year. We are being proactive at the Ministry of Labour in the area of health and safety. We recently recruited 20 health and safety inspectors and we will be advertising this summer for 26 more.

Finally, the fifth principle of our reforms and personally for me the most important, we must focus on the prevention of injury and illness. To highlight this new focus, we have now included prevention as part of the purpose clause of the act.

Our goal is to make Ontario's workplaces among the safest in the world. Emphasizing prevention and working towards zero tolerance for fatalities will help to reduce the human, the social and the economic cost of workplace injury, illnesses and fatalities.

On average, someone is injured on the job every nine seconds in Canada, and one worker in 15 is liable to have an accident in the coming year. However, most alarming is the fact that one third of compensable time-loss accidents involve young workers between the ages of 15 and 29.

Clearly, there must be a greater emphasis on prevention. Hence our changes in Bill 99. They will mean a complete change in focus from compensation to the prevention of injury and illness.

In recognition of this emphasis on safety, the WCB will be renamed the Workplace Safety and Insurance Board. This will also reflect its return to insurance-based principles in its operations.

The bill before this committee is the final step in a reform effort that began even before our party formed the government two years ago. Since we assumed office, we have continued to consult, first in the development of Bill 15 and then in the development of the New Directions report by my colleague Cam Jackson. Mr Jackson consulted with more than 150 individual injured workers in 1995 and 1996 across the province, and he also received more than 200 submissions providing considerable advice on reform initiatives.

Furthermore, as the Ministry of Labour began its process of turning Mr Jackson's report into legislation, we continued to consult with injured workers, employees and employers. This consultation has greatly enriched the final content of Bill 99. In the eight months since the bill was first introduced we have received feedback in a number of areas, and I want to review some of what we have heard.

Some people in the employer community have said, "Why are you not adopting a three-day waiting period?" We did not include a three-day waiting period because, first, there is no compelling evidence that a benefits waiting period by itself has any significant impact on workers' compensation systems. Second, it penalizes workers who are legitimately injured, particularly workers whose duties expose them to danger, such as police and firefighters. Third, such an amendment would have required an inappropriate intervention in collective bargaining relationships, since the waiting period, to be effective, would have required a prohibition on negotiated top-ups, and we were not prepared to intervene in the collective bargaining relationship.

Another issue that has been questioned is why we did not redefine "accident" to ensure that injuries are directly traceable to the workplace. In short, there is no evidence that redefining the word "accident" simplifies the problem of entitlement or better screens out undeserving claims. However, there is a risk that a new definition or a revised entitlement provision would cause greater uncertainty for all parties and generate litigation without making a difference in the types of claims that receive benefits. Instead, our approach restricts access to benefits for injuries that have multiple non-work causes, such as chronic mental stress, and limiting benefits for chronic pain.

We have received some feedback on return-to-work obligations. Our objective is clear: We want to get injured workers back to work in a safer and more timely manner. However, it has been pointed out that there may be a need to clarify the return-to-work and labour market re-entry sections in the bill to ensure that the process is fully defined and seamless. I would encourage this committee to provide advice and suggestions to us on how we can ensure that this provision will improve return to work.

WCAT: Some concern has been raised by employers and injured workers over changes to WCAT's so-called policy audit function. Bill 99 ensures that the final say in all policy matters rests with the board, not WCAT. I should say this has always been the full intent of the existing act on paper, but it hasn't always happened in practice. There has been some suggestion that the WCB's ultimate policy authority could be assured in another manner.

I want to say that in this area of WCAT and in others that I have not mentioned, the government is quite willing to consider ideas or suggestions you have that would refine the bill. We want and look forward to the 14 days of debate that are going to take place on Bill 99. It's going to happen not only in Toronto but in cities and towns across Ontario this summer.

I want to extend my sincere appreciation to the members of this committee, and I appreciate the opportunity to discuss the reforms we have proposed. To help you, I am pleased to be able to provide each member of the committee with a table of concordance between the old and new acts. As I said, we have rewritten the act.

In conclusion, I think it's important to note that the changes are the result of years of hard work on the part of many governments, many individuals and many groups. Ontario's workers' compensation system has been beset by serious problems for many years, and this change we are proposing is certainly overdue.

Once implemented, these reforms will ensure that employees and employers in Ontario have an insurance plan for workplace injury and illness that operates on sound business principles and delivers among the most generous benefits in North America at a cost that is also among the most competitive.

Thank you, and warmest wishes in your deliberations.

**The Chair:** Thank you, Minister. We move now to the official opposition, to Mr Patten.

*Interruption.*

**The Chair:** Excuse me, sir. No, I am sorry. You are out of order, sir.



*Interruption.*

**The Chair:** I am sorry, sir. You are out of order. You will have to be removed from the room.

*Interruption.*

**The Chair:** We're going to recess for five minutes.

*The committee recessed from 1551 to 1557.*

**The Chair:** Ladies and gentlemen, we would very much like to continue with these hearings. The minister is here to hear the presentations from the opposition critics. If we can get this room settled, we would like to continue. The Union of Injured Workers, Mr Liversidge and Mr Seiler are on the agenda for presentations. We would like to be able to move forward.

*Interruption.*

**The Chair:** Ladies and gentlemen, please, with your indulgence, we have a number of presenters whose views we would like to hear. I think you yourselves are some of the presenters. If you could kindly take your seats, we will begin our hearings and we can proceed. I ask your indulgence in this regard.

Ladies and gentlemen, planned this afternoon, at 4:50, I see on our agenda is the Union of Injured Workers. If you will please take your seats, we can begin, we can hear the presenters, and that includes the Union of Injured Workers. Please take your seats, ladies and gentlemen.

*Interruption.*

**The Chair:** We would like to begin this committee, once again. We are now going to move to Mr Patten, who is the critic for the official opposition. Mr Patten, when you're ready, please.

**Mr Richard Patten (Ottawa Centre):** I want to begin this afternoon by expressing likewise my disappointment with the lack of time that we have had. We will have to hear many individuals, some of whom you've heard from this afternoon. Of course, this is really important because, as the minister has said, this isn't simply a series of minor changes to the WCB legislation, but is a complete rewrite of the act, a definite shift, of which everyone ought to be aware. In essence, employers are going to be paying less and the injured workers are going to be getting less.

I don't believe there has been a balanced opportunity for people to be heard. When Cam Jackson conducted his review, it's clear to me that most were employer groups that were heard from. I've had the opportunity to meet with various groups over the past couple of months to discuss Bill 99 and I am looking forward to hearing the presentations before us here in Toronto and around the province.

*Interruption.*

**Mr Patten:** Madam Chair, could they keep the door closed when someone is making a presentation.

I would like to give a brief overview of how I view the impact of Bill 99. As we all know, reorganization has already begun at the WCB, well before the bill has been debated in the House or has even been dealt with in committee.

The WCB implementation plan by the board itself indicates that "the most profound changes will occur in the front-line delivery of our services to injured workers and employers," and that's quite evident.

According to its own question-and-answer sheet which was put out by the board on its reorganization, it says, "In the past, little attention has been paid to managing health care for injured workers, especially with the view of returning them to work as early and as safely as possible, even before full recovery."

There is a primary emphasis, from compensation to prevention of injury, yet I don't see anything in the legislation with respect to increased funding or the reallocation of resources for education and prevention of injuries in the workplace.

We also have the shroud of intimidation through the new "zero tolerance" policy for fraud. Although it isn't directly in Bill 99, it is still what I see as part of the agenda of the WCB reform. Recently introduced anti-fraud measures — on May 16 — are consistent with other Harris government attacks on the weak and the disabled. I'm not against attacking fraud, but we should attack it intelligently. I think the surveillance measures are aimed at harassing the little guy. They're going to be spending about \$10 million for this new program. There were about four cases last year, out of 199,000 people.

We have heard from the WCB vocational rehab case workers that they are being privatized. What we have been told is this: "The traditional role of vocational rehabilitation case workers will change as the return-to-work requirements in the new legislation are implemented over the next two years. There will still be a role to arrange labour market re-entry assessments and services for injured workers who cannot return to work with their pre-injury employer."

I continue on, and this is from the board itself: "Some vocational rehabilitation staff may wish to enhance their knowledge and skills in the other areas of our business" — in other words, they are going to be out of a job — "for example, revenue, experience rating and adjudication in order to become a customer service representative." That's from the board.

Another example of privatization is the board announcement that it will outsource all of its investment management activities. Since the new management has compared the board to a large insurance company, some think that outsourcing its investment management activities is a strange move, as it is usually their core business.

The cut in employee benefits and cut in employer premiums in my opinion is a shell game where the employees lose. You're reducing workers' benefits from 90% to 85% of net average earnings, but these injured workers still have to cover increases in food, shelter and education costs. If they have children, they have to feed those children. How can they be expected to do this on a reduced fixed income? The reductions in the cost-of-living protection for almost all injured workers will take effect. It's estimated that if Bill 99 is implemented without amendment, there will be about \$15 billion less paid to injured workers than is currently the situation and \$6 billion being given back to employers.

We are seeing the dismantling of important parts of the system, such as the erosion of the independence of the Occupational Disease Panel by folding it into the board and having it report to the board, creating a situation of the possibility of less objective research.

Rights are being limited under the legislation and that is of concern to me; for example, the right to compensation for occupational chronic stress or putting restrictions on compensation for chronic pain, as well as mental stress. I understand this is to be defined in the regulations, which we have not seen yet.

Another example is the limiting of the appeals process by removing WCAT, the independent appeals system. The appeals tribunal must, under Bill 99, follow board policy. A whole level of appeal, one of the checks and balances, is being removed. What it means is there is a loss of a learning organization. The minister says she's prepared to entertain some ideas on that. I'm happy to hear that and we will have some thoughts and recommendations for you.

One of the most serious impacts of Bill 99 is the offloading of costs on to other systems. In 1996, of the 196,000 long-term disabled workers on WCB benefits, 6,600 had to turn to social assistance to make ends meet. While this is a relatively modest proportion, 3.4%, it's a lot of people and a lot of families. I think there is little doubt that there will be an increase in the number of individuals downloaded on to the welfare system as a result. It's also going to be much harder to get compensation as a result of Bill 99 and it will be harder for these persons to support themselves and their families on reduced pensions, many of which are bare bones to start with. Who will assume that cost? Municipalities and local taxpayers will be assuming the costs. The offloading on to other systems is ultimately offloading on to the people we have pledged to support in illness or in injury, or unfortunately in death.

Workers' compensation is supposed to be based on balance. It's not supposed to be one-sided, but this is the direction this government is moving towards. We welcome the opportunity to make the board function more efficiently and effectively for injured workers and, by extension, for employers. We all agree that workplace injuries serve no one. Injuries don't serve the employer or the workplace, nor do they serve the workers who are trying to earn a living for themselves and for their families. But Bill 99 has only in small part to do with meaningful reform of the Workers' Compensation Board and much to do with cutting benefits and programs to injured workers and the most vulnerable people in our province.

Bill 99 isn't about fairness or equity, nor is it about balance, the fundamental value upon which the act is based. It's about who pays and it's built on an ideological agenda that is somewhat mean-spirited and designed to blame the weakest in our society for all our problems. That's been the agenda of this government from day one. We have seen it in the cuts to hospitals, to our seniors, to our children, to our schools, and now the government is going after injured workers.

I personally am looking forward to the open public hearings on Bill 99 so that the government will hear real people with real concerns, the people whom this act was meant to serve, both employers and workers injured on the job. Thank you.

1610

**The Chair:** Thank you very much, Mr Patten. We move now to Mr Christopherson from the third party.

**Mr David Christopherson (Hamilton Centre):** Thank you, Madam Chair —

*Interruption.*

**The Chair:** We'll try to keep the doors closed while you're making your presentation.

**Mr Christopherson:** No, that's fine. I appreciate the fact that enough people are here to tell this minister what they think about this legislation. That's what this is all about.

The minister ended her remarks by saying, "Warmest wishes." There's your response to you telling them, "Warmest wishes," as you're taking \$6 billion and giving it to your corporate pals. It's not a wonder they're outraged. I told you in the House this would happen, and you all sat there and you said: "No, you're just full of a lot of wind, Christopherson. None of this really matters. People aren't that outraged."

There are two rooms out there overflowing with injured workers who are out of their minds with shock and anger that you'd do this to them, and you sit there and say, "Warmest wishes."

Minister, this whole process is a disgrace. I defy any backbencher to blame these people for coming out and doing what they're doing today after what you've done to them: four lousy days here while we're sitting in the House, six measly days out across the province, when you've rewritten the entire Workers' Compensation Act. That's a disgrace and an insult.

On Bill 49, a bill that you said was mere housekeeping and nuts-and-bolts changes, you authorized four weeks of province-wide public hearings. On a bill that you admitted today is a major rewrite and a fundamental change in the way we operate workers' compensation, you give six measly days across the province. You know why you did it? Because you're afraid to face these people. You're afraid to face these people in community after community because you can't handle the heat, and you ought to be ashamed.

Minister, continually here and in the House when I ask you questions, you always offer up the nice words about how fair your government is being and that you want to be balanced and you're reasonable, and the tone of your voice and the words you choose are so mellow and soothing. Let me tell you what you really think about the word "fair." We used to have the word "fair" in the WCB legislation. You took the word "fair" out of Bill 99. You took the word "fair" out of the definition of what this act is to do.

That's not the first time you've done it. You took the word "fair" out of your Ontario Labour Relations Act, Bill 7, the bill that you rammed through the House with not one minute of public hearings. You took the word "fair" out of that legislation.

This is not fair to injured workers but it sure is fair to your corporate pals, because while you took 5% out of the income of injured workers, people hurt on the job through no fault of their own, you gave 5% to your corporate pals — \$6 billion. How the hell do you sleep at night?

In addition to that, you have reduced by 50% the amount of money that's set aside for injured workers' pensions. That's what injured workers got. How did you



describe your legislation? "Generous." How the hell is taking 5% away from injured workers and giving it to your pals and cutting by 50% the amount of money you set for pensions for injured workers, who are already among the most vulnerable in our society — how do you call that generous?

I'll tell you, if I were one of your corporate pals getting a nice piece of that \$6 billion, yes, I'd think this was wonderfully generous legislation and I'd be out in droves to thank you for what you're doing. But if I were an injured worker, instead of being an MPP, I'd be in that crowd with these people right now, because they've got to take you on, and I back them up for taking you on.

You've taken the Occupational Disease Panel, one of the most successful pieces of improvement we've been able to do in this province over decades, and you've killed it. I've read into the record letters from around the world, from organizations, experts — not political people, not union people — academics, scientists, people whose lives are dedicated to the profession of preventing workplace accidents and illnesses, and they're all but begging you not to do this, because they hold it up as an example of what ought to happen. You're killing it.

I represent thousands of steelworkers and auto workers in my community of Hamilton-Wentworth. Gord Wilson, as president of the Ontario Federation of Labour, represents hundreds of thousands of steelworkers and auto workers whose lives are put in jeopardy by what you're doing. How the hell do you call that fair? Where's the fairness? Where's the fairness to at least hear people out?

You said you're going to take into consideration suggestions that are made about WCAT. We know you've been getting pressure from businesses to change your legislation on WCAT. That's why you're open-minded to it. Why don't you tell these injured workers that you're open-minded enough to consider changes to your 5% takeaway from the income of injured workers? Why don't you tell these workers that you're open to the suggestion not to take away 50% of their pension entitlements? Why don't you tell injured workers that you're open to suggestions about not killing the Occupational Disease Panel?

Minister, you're a disgrace. This government is a disgrace. I and the NDP and all the injured workers and the Ontario Federation of Labour are going to fight you every step of the way, six days or 60 days, right across this province. You will rue the day that you introduced Bill 99.

1620

#### L.A. LIVERSIDGE AND ASSOCIATES LTD

**The Chair:** Ladies and gentlemen, we will now move to our first presenter of the afternoon. The committee welcomes Mr Liversidge from L.A. Liversidge and Associates Ltd.

*Interruption.*

**The Chair:** Ladies and gentlemen, I ask your indulgence. It is very important that presenters, whether they're for or against the bill, have a fair and open opportunity to come before this committee and make a presentation.

*Interruption.*

**The Chair:** Ladies and gentlemen, please, I ask your indulgence. You are in the Legislature of the province. Kindly respect the traditions and rules of this institution.

*Interruption.*

**The Chair:** Order, please. Mr Liversidge, we welcome you this afternoon. We look forward to your presentation.

*Interruption.*

**The Chair:** Order, please.

Mr Liversidge, welcome. We appreciate your taking the time to come before the committee this afternoon. Your presentation time is 20 minutes.

**Mr Les Liversidge:** I was going to preface my comments today with this statement, saying that one can expect a vigorous and aggressive resistance to workers' compensation reform. I guess I should go back and rewrite that a little bit.

All three governments that have attempted to reform workers' compensation in this province over the last decade and a half have experienced concern, have experienced fear from injured workers, and I can understand where that fear can come from. But when one looks at the improvements and enhancements that have been made and one gives an honest assessment to Bill 99 — and I don't intend to speak the loudest here perhaps today, but I have considered my thoughts very carefully over the last several years and most particularly since Bill 99 was introduced — and if one considers Bill 99 carefully, it really does, in my opinion, represent a maturing of reforms initiated by all three political parties, from the Tory Bill 101 in 1984 to the Liberal Bill 162 in 1989 and the NDP Bill 165 in 1994.

I think it is fair to say there is a thematic connection. That connection, in large measure, can be found in an increased employer and worker accountability coupled with a higher expectation in Bill 99, a worker/employer/board cooperation. That is, in my view, a central theme of this bill that ought to be supported and lauded and one that represents the direction of reform of workers' compensation in this province over the last decade.

However it's also my view, with this as with other reform packages and likely with any other controversial piece of legislation, that there are areas to improve this. It's my view that there are actually several serious problems within Bill 99, some perhaps powerful enough to undermine some of the government's reform goals and some that have the potential to enhance some old inequities and potentially create some potent new inequities.

The package I have presented to this committee is written as a detached and impartial analysis, non-partisan in flavour, with no side favoured. My aim is to focus on areas that require attention and the need for improvement. I heard some of the comments from the gallery and I think it is important and that people would be wise to stop and listen, because there are some important views that can be expressed that can assist in some positive adjustment of this bill.

In the materials I've placed before this committee I have set out what I think are five critical areas that ought to warrant some additional attention. I'm only going to be focusing on one of those here this afternoon. I will touch

on the other four ever so briefly, but I would encourage the committee to review my materials in detail.

The first deals with changes to the wage loss scheme. It is my view that Bill 99 masterfully calibrates many of the shortcomings of the wage loss process, requiring benefits to be adjusted as the worker's circumstances adjust, a basic simple principle, yet one lacking since wage loss was introduced seven years ago. However, it is also my view that Bill 99 confers an extraordinary discretionary power on to the board which may lead to unfair over- or undercompensation and a proliferation of appeals. For example, the bill allows the board to deem a worker's earnings, if a labour market re-entry plan for the worker has been fully implemented, without defining what is meant by "fully implemented." The government's intentions, in my opinion, are lost in that vague language and I would suggest a second look to that.

The bill also focuses on the duty to cooperate for both workers and employers. I think that's a positive innovation, but in my view some unfair and unneeded new legal requirements for both workers and employers are created, and on that as well one I encourage a second look.

Assessment rates: Bill 99 provides a very broad discretion to the board in setting individual company assessment rates, yet individual disputes are not allowed to proceed to the appeals tribunal. This is unfair and must be changed.

Stress: Bill 99 removes the board's jurisdiction to consider claims for chronic occupational stress which will, in my view, open the doors for needless courtroom action. It would be preferable to set out in very strict language what the entitlement criteria are and have the board determine these cases.

My main concern, though, and what I want to spend most of my time on deals with an issue the minister introduced a few moments ago, and that is the operation of the appeals tribunal.

Bill 99, from my reading of it, compels the tribunal to follow board policy even if that policy is unfair or wrong. This is a very serious mistake that will assuredly lead to injustices.

While it is clear that the government wishes to ensure that the board of directors remains in control of the policy agenda, this can, in my opinion, be accomplished without eliminating the important policy audit function of the tribunal. I have presented for the consideration of the committee 10 principles which I would suggest you consider to achieve that.

It is my view that a certain mythology has emerged over time concerning the tribunal, embracing the mistaken notion that it's somehow unchecked and through its own initiative has improperly expanded the scope of the system. The tribunal has been unable to shake that notoriety even though a cool analysis proves this not to be the case. In fact, in my paper I've highlighted several examples that show the board is more culpable in that area than is the tribunal.

It also seems forgotten —

*Interruption.*

**Mr Liversidge:** I'm in your hands, Madam Chair. Should I continue, stop, slow down or what? Do I get a minute on my time? Yes? I'll take a minute on my time.

It also seems to be forgotten that the tribunal has issued innumerable decisions that have resulted in reduced employer taxes and fines where board policy called for unfair levels of employer taxation. Again, in my package to you I've listed several examples of those.

It is my considered view that a curtailment of the tribunal's power will ensure that the very real and legitimate pressures that gave rise to the tribunal in the very first place will return. Policy development will be rendered effectively dormant and the only remaining avenue for policy reform will be through endless political action.

Effort must be focused on depoliticizing board decisions as much as possible. My case, I think, is made somewhat today. This is done, in my opinion, through ensuring a scrupulously fair and detached appeal process. I don't intend to suggest for a moment that the board is somehow uncaring or insensitive. I simply recognize that workers' compensation administration is a busy and congested thoroughfare. There is simply no time within the board's processes to pull over to the curb and carefully scrutinize the correctness of individual policies as they apply to individual and unique situations.

It must be recognized that the board will not always get it right. In fact, it is my view that it is very much to the benefit of the board to have the tribunal test its policies through a very sophisticated and fair legal method. Even the best-intentioned and most capable Workers' Compensation Board of directors, with the crowded business agenda they face, would not be in a position to initially consider the multitude of policy issues that arise in this complex system, let alone review them over and over again as disputes arise.

Two years ago, when appearing before the royal commission, I said: "While the system may be more complex, the WCAT set in motion a dynamic process of law reform that not only ensured individual cases would receive a higher standard of justice, but significant and contentious issues would be openly debated. The individual claimant, be it employer or worker, now had an opportunity, based exclusively on the merits of the case, to access and positively influence the policy agenda." These sentiments remain valid today.

The establishment of the appeals tribunal, by a previous Progressive Conservative government, it must be remembered, was farsighted and likely the most significant and positive adjustment in contemporary system design we have seen. The tribunal should not be viewed as some foreign adjunct to the system that interferes with the business of the board, but instead as an integral feature of the scheme, offering insight, balance and informed reflection.

It is preferable to have contentious issues fully canvassed and debated within the confines of the workers' compensation system than have the debate continuously spill over to the political arena. I can assure you I had nothing to do with the demonstration to demonstrate that point very vividly here today.

1630

The tribunal allows issues to be addressed on their merits, not on their public relations potency. I have offered a set of 10 principles which, if adopted, I believe



will satisfy the need to have the board maintain ultimate control over policy but ensure that inequitable policies are set aside and the system gets to the right answer.

The tribunal should be required to refer contentious policy issues with suitable recommendations directly to the WCB board of directors, which will then quickly review the matter. This way the board keeps control but the claimant has a chance against unfair policies. Throughout, this process should be conducted in as public a forum as possible.

In my opinion, dynamic and thoughtful policy development can only be achieved with the assistance of a scrupulously fair and detached appeals process. I encourage the committee to carefully review these comments and consider recommending appropriate change. If I may be so bold, while there may be some other issues, this is one area where I believe a reasonable consensus can emerge.

Thank you very much, Madam Chair. Those are my comments and I think there's some time left for questions.

**The Chair:** Yes, we have about two minutes per caucus. We'll begin with Mr Patten from the official opposition.

**Mr Patten:** I appreciate your presentation, Mr Liversidge. You suggest there will be an increase in litigations because of external factors, general law etc, that the board itself may not be in tune with. The way I see it is that the tribunal is in a sense the front line dealing with the reality of a case. On that basis it learns what is required, what is fair and what is possible, and therefore is what I call crucial to the learning of that organization. Every organization evolves and changes over time. If that's not the case, then I think we're going to be in for one hell of a tough time. As you suggested in your paper, it will only lead to all kinds of other ways of dealing with trying to get around what will be perceived ultimately as unfair. Is that the way you see it?

**Mr Liversidge:** I don't know if I fully understand the question. The tribunal itself leads to a fair amount of litigation in and of itself. I don't think there's any mistake about that.

All I'm suggesting is that you have to look at what it is the tribunal delivers. It delivers a little bit more than just a sounding board, although it does do that. It delivers a little bit more than just an educational process, although it does do that. What it also delivers is a certain standard of integrity, a certain standard that takes some years to develop. I think the present appeals tribunal has developed that, has earned that. I think it has sustained that over a period of time. It is time to look at perhaps some design adjustments, but that integrity, where even if you disagree at the end of the day — and not everybody agrees. If there are two people going into that and there's one answer coming out and they're polarized going in, there still might be a disagreement at the end of the day. What the tribunal has to deliver, what the process has to deliver, is that the claimant is satisfied, be it worker or employer, that they had a chance to put their case forward and that the case was fairly and appropriately considered.

There is going to be all sorts of litigation coming out of Bill 99 for the same reasons there was a lot of litigation coming out of every other change in statute, every other change in process, because there's going to be a certain period of time when you're not quite certain what these changes in policies mean. That's not a problem. I've got no quarrel with that. I think, though, that when you do have a bit of a dustup on a case, what this law means, what this policy means, something positive ought to come out the other end. The positive, the value added, is the greater understanding that you speak of, but that's only possible if it's delivered through an institution that has a high standard of integrity, where people who, losing, think they got a fair deal.

**Ms Frances Lankin (Beaches-Woodbine):** There are two areas that I would like to ask questions on if I have time. Let me begin with your comments on the tribunal jurisdiction, though. I guess you and I were both around in the very early days of the tribunal. You've outlasted me. I think the points you make are very important with respect to the role of the tribunal, due process, independent and with integrity, a place for reviews.

As I listen to your arguments and most of the principles you put forward, I think I could be in agreement with you on all of them, and yet at the very end of it you still suggest that the process should go back to the board for confirmation or not of board policy and the final say.

If the principle is that you can only get justice if there's an independent review of how an institution is implementing the law of the land, and if their policy is deemed by an independent, quasi-judicial review to be in breach with the faith of the legislation, the intent of the legislation, why would you hand it back to the board in the final analysis to have the final say?

**Mr Liversidge:** That's a very good question and there are several answers to that. I'll take a few minutes to look at that.

One of the reasons is that the tribunal deals with only the very narrow issues of the case itself. The other reality which we've discovered over the last 12 years is that there's not always an immediately apparent right answer. It doesn't jump out at you. It doesn't come out and say, "Hey, that's wrong; this is right." In fact, the experience of the appeals tribunal has shown that the right answer, if you ever do reach a point of actually having the absolutely right answer — I think it's probably best to describe it as the best answer. The best answer takes a period of time to emerge even out of the tribunal. One case doesn't do it. Two cases don't do it. Several cases tend to do it.

The idea that then you would have an appeals tribunal dealing with a very narrow issue, speaking to that, and then that becoming the binding policy on the part of the board I think would be inappropriate, would be wrong, and it would be wrong for several reasons.

It would be wrong because it doesn't allow for and consider the opportunity for all of the other processes that are involved in workers' compensation to get in line and to get in sync with the emerging thinking the tribunal may develop. I think it's appropriate for that to take a period of time. When you introduce a new reading of an old law or a new reading of a new law, it's going to take

some time for the tribunal to acquire, firstly, an institutional expertise on that and, secondly, an institutional viewpoint that has integrity and credibility. The third part of the process, which I think is incredibly important to sound workers' compensation protocols, is that the public, the people involved, have to have an opportunity to learn during that process as well.

Having things go back to the board ensures a higher standard of overall stability. There have been too many cases, too many instances, where there have been divergent points of view coming out of the tribunal on the same issue, where one set of decisions may speak and say, "This is the best answer or the right answer," and another set of decisions may speak and say, "This is the best answer or the right answer." I think the board ultimately has to be charged with that responsibility.

What I am saying is that the best model, and I think the original design as well, the original thinking — and I don't think the current model works all that well; I think practice has shown that. The initial thinking, the best design, is so that these two important institutions work in tandem, work in a more synchronized manner so that collectively and together they come to the same or best answer. To me that's a far preferable way to do it rather than simply one saying, "This is the answer," and the other one saying, "We disagree," or the reverse. It hasn't worked. It creates an unworkable tension. It creates a tension that does not assist in sound policy development.

1640

**Mr Bart Maves (Niagara Falls):** Thank you for your presentation, Mr Liversidge. Continuing on in that vein, how would you assure that the to and fro between WCAT and the board with regard to discrepancies in policies would occur?

**Mr Liversidge:** Would what?

**Mr Maves:** You'd prefer to have WCAT not just have to adhere to the policy of the board.

**Mr Liversidge:** That's right.

**Mr Maves:** How would you have that to and fro —

**Mr Liversidge:** Specifically what I've suggested is that some disservice is done to workers and employers if you have effectively two parallel systems of workers' comp, with the same set of facts getting significantly divergent treatment depending upon what track you happen to end up on. I think that's a problem.

My 10 principles suggest this: Always the tribunal has to, when it renders a decision, respect what board policy is. However, when it identifies through exposure to a case that there is something wrong with board policy — and I'm suggesting more than simply that the law is wrong; I'm suggesting that there are a lot of board policies which may be quite legal but still somewhat unfair — if the policy is wrong in law or unfair or unreasonable, the tribunal can construct its best case, get that through the chair of the tribunal to the board of directors, and they would have an opportunity to look at that and tell the tribunal, "We agree; we've got some changes here," or there would be some dynamic process going back and forth. To me that makes some sense.

The difficulty is the present system. Since I guess about 1989, they just simply started to ignore what the

tribunal said. They said, "Forget it." I don't know the reasons for it, but when there were those divergent viewpoints, nothing happened about it. Even now we could trace back a series of decisions. In my paper I've outlined several dealing with employer taxation issues where the tribunal is saying, "The policy is best this," and the board is still saying, "Well, no, we'll still overtax employers." That's wrong.

I'm suggesting a process that simply says: "Hey, listen. If there's a divergent viewpoint here, figure it out. Get together on the quality of the argument, on the quality of the case, on the quality of what the facts say and what the best answer is." These aren't easy questions; these aren't easy things. These aren't things where there is a readily right answer. It takes some intellectual effort to come up with the best answer in some of these very complicated cases.

**The Chair:** That concludes our time for you this afternoon. Thank you for your very comprehensive package. We'll read it with interest. We thank you for taking the time to come before us this afternoon.

SCOTT SEILER

**The Chair:** Is Mr Seiler present? Sir, are you Mr Seiler? Would you please take your seat at the place where the microphone is turned on. Welcome to our committee.

**Mr Scott Seiler:** Thank you very much. It's certainly an adventure out there. Today I'm speaking on my own behalf, not on behalf of an organization, simply because we didn't have an idea that the hearings were going to be happening and never had a chance to do any kind of formal presentation. I don't have any documentation to hand out at this particular time, but I would like to touch on a few issues that are very, very important to people with disabilities in this province.

I think the first one will be the issue of the diminishing amount of places where people with disabilities are going to be able to go for income supports and rehabilitation in the near future. We are seeing the CPP act and the program being diminished in its size and scope: who is eligible and who is not. We are seeing the new Ontario benefits program introduced last week in the same boat, where very, very few people are going to be able to get any kinds of benefits. Now we're beginning to see that happening with the Workers' Compensation Board.

I'll be very honest. I'm very, very afraid for the people who are on all of those systems. One of the major reasons for that is because the people who are on these systems depend on not just one of the systems; usually it's many systems. For instance, a person who's on WCB will also be asked to be on CPP and could even get a top-up from the old FBA system and now the new system. That's if they're going to be eligible for any of them.

I'm afraid that injured workers are going to for the most part be left on social assistance in Ontario Works and, for that matter, be subject to workfare whether they can work or not. There are absolutely no guarantees in any of the legislation or anything we've been able to see that will make sure that people will be retained on pensions. People are losing 5% of the pension that they



do have, which is a tremendous problem for a lot of people in this system simply because the system is already not paying people enough before the deductions simply because of things like the Friedland formula and the diminishing pensions as time goes on.

I also have some very, very serious concerns regarding the entire issue of an employer having access to medical files of an employee. I think that's reprehensible. There is absolutely no need for the full file from a medical practitioner to be open to an employer. There's absolutely no need, and I would hope there will be a charter challenge about that. I would suspect it will win too, because that is an absolute breach and there is no need for an employer to have that full medical file.

In fact if the employer has that full medical file, the chances are there's going to be tremendous discrimination. Even when it was just a very simple injury and something that was not even serious, there could be some other things in that person's life that have the employer discriminate against that person. It will also make it much more difficult for people in the future to get jobs when they are on compensation, simply because any new employer will just say, "I want access to that information as well." That means they will get that access and that will block injured workers from getting any kind of a job in the future.

I also have problems around the whole area that the pensions are going to be diminishing over time, as I mentioned, with the Friedland formula. That has been enhanced and brought forward in the new system that is being proposed in Bill 99. I think it really needs another look-see. We came out very strongly against that formula the first time it was put into effect with the last government, and I will strongly say that that has to be looked at again because pensions diminishing over time will not end up helping anybody. What you will end up with is people dependent on about four or five different systems and possibly even only one, if they survive on the system at all, and that would be the Ontario Works program here in the province.

I also would like to say that injured workers must have a voice on the board that is going to oversee the services for injured workers. There must be consumer representation. Why you are getting what you are getting outside is because you are refusing consumer representation on the Workers' Compensation Board. If you let workers on and have them on there not as tokens but as active participants in this system, you will have a much, much better system than you will if you only have employers or government people, appointees, sitting on the committee.

Like I said, I have not had a huge amount of time to prepare — we were very much told at the last minute that these hearings were going to happen — so I'd like to open it up to some questions.

**The Chair:** Thank you very much. That was a wonderful start. We will go to the NDP caucus for questioning.

**Ms Lankin:** How long does each caucus have?

**The Chair:** We have about 12 minutes, so that's about four minutes per caucus.

**Ms Lankin:** I appreciate your presentation and I want to explore with you the concerns you were raising about

persons with disabilities or injured workers as to where their income support and support for rehabilitation will come from in the future. You cited stricter eligibility criteria for CPP. We haven't seen the eligibility criteria for the new Ontario family benefits disabled plan but we saw some early drafts and proposals of that which caused great concern in the disability community. The regulations for that will be forthcoming and there's a lot of fear that there are going to be, as you say, stricter eligibility criteria, and then the sorts of things we see in this bill.

Particularly, I want to raise the issue of the way in which the bill, for example, cuts out certain areas from compensation altogether, like chronic stress, and puts limits on other areas like chronic pain with "normal healing time." It seems to me that there are people who will potentially have multiple problems, who will find themselves ineligible in all these areas. I wonder if you could address that, and specifically these two sections of Bill 99 and the impact you think it's going to have.

**1650**

**Mr Seiler:** The two sections that you're talking about are the ones on occupational stress and illness —

**Ms Lankin:** And chronic pain.

**Mr Seiler:** — and I think that that will really play a huge part. What's going to end up happening is many of the people who will go for the different types of services — only people with significant disabilities are going to be allowed, so if the disability at the time is not considered significant to the social assistance system, it will not actually be allowed to be put on the system. If it is severe enough, the chances are the person won't be able to work anyway and they will be on a system for life.

Actually it's kind of interesting because the new system that they are putting together right now here in the province is one of permanently unemployable. All they've done is drop the name, but the truly unemployable people will be remaining on the system. It's going to be very difficult for people to get access to these systems that are coming up, especially with the categories that are now not going to be recognized by WCB.

What these systems usually do, whether it's the new welfare system or CPP, is rely on what other systems also say are eligible and not eligible criteria. So the one system feeds on the other system which feeds on the other system. When you get denied in one, the chances of you being eligible for any of the others are going to be next to nil.

**Ms Lankin:** Thank you.

**The Chair:** Mr Christopherson?

**Mr Christopherson:** That's fine, thank you.

**Mr Maves:** Thank you very much, Mr Seiler. I apologize. I missed at the beginning your affiliation and how many dealings you have with the WCB.

**Mr Seiler:** My affiliation is with the Income Maintenance Group, but I'm not here actually formally representing them today because we did not have enough time to put together a formal presentation. I thought it was still very important to come to the hearings and say something in support of injured workers.

**Mr Maves:** Okay. In the discussion on chronic mental stress, Bill 99 confirms the existing board policy by excluding chronic mental stress. From the conversation

you had with Ms Lankin, you clearly disagree with that exclusion?

**Mr Seiler:** I think that people have tremendous mental stress these days in the workplace, especially anybody who happens to work in any form of high-stress job where there would be a lot of pressure all the time, and also with the number of people that are having to work 80 or 100 hours a week and doing two and three different jobs in a company and only being paid for one. I think that stress is a very, very big factor in today's workforce and it's very much of a disabling factor for many, many people today as well.

**Mr Maves:** Thank you. I just wanted to let you know that on the functional abilities form there is in no way whatsoever a requirement for someone's medical file to be transferred to an employer. It's a one-page form that talks strictly about the injured worker's capabilities. I wanted to let you know that.

**Mr Seiler:** That's actually not what any of the legal representatives I've been able to talk to in the last couple of days have been able to tell me. They say it will give the employer direct access to the person's full medical file, not just their WCB file.

**Mr Maves:** That's not true. It's a functional abilities form and it's very restricted to the capabilities of an injured worker.

**The Chair:** Mr O'Toole, did you want to go forward with a question?

**Mr John O'Toole (Durham East):** Mr Maves has made the point that the medical record is functional abilities.

**Mr Patten:** Working in the area of income maintenance, what was your reaction to the 5% cut in benefits?

**Mr Seiler:** I think the 5% cut in benefits is going to very much hurt many, many people who are collecting WCB. It's a myth that many people make extraordinary amounts of money on WCB, just the same way as it's a myth that people make extraordinary amounts of money on family benefits or on general welfare.

I think one of the things that is very important when you talk about that is the kind of standard of living a person is going to end up having. Will they be able to pay their rent? Will they be able to buy the necessities of life? I'm afraid many injured workers will not be able to do that with the 5% cut, because they are not making very much money to begin with.

**Mr Patten:** On the issue of medical records, the minister said she was prepared to listen to ideas, so I hope you take a look at the form. But I understand that the board would still be in a position to change the nature of that form at any particular time, that it's not really in legislation. In my opinion, that is one of the weaknesses of it. When you look at the form you may find it looks all right today, but who knows? If the board decides that it wants to pare some of the benefits it gives out to save money, you can redo this form. Is that your view as well?

**Mr Seiler:** Anything that's in regulation is highly changeable, and I'm afraid that there's too much in regulation in this bill and many other bills the government is presently working on. In fact there's so much in regulation in much of it that the government can change it with a few weeks' notice at any particular time for

anything in any of these bills. The Workers' Compensation Act is not any different as far as that's concerned.

**The Chair:** Mr Gerretsen, did you have a question?

**Mr John Gerretsen (Kingston and The Islands):** I think section 37 is quite clear when it states, "Every health care practitioner who provides health care to a worker claiming benefits under the...plan...shall promptly give the board such information relating to the worker as the board may require." That presumably doesn't have anything to do so much with the current form, but whatever they decide in the future they require, they're going to get. That could include the entire medical file.

**Mr Seiler:** Absolutely, sir.

**Mr O'Toole:** Mr Chairman, if I could clarify —

**Mr Christopherson:** He's out of order.

**Mr O'Toole:** Mr Gerretsen is referring to the wrong section. The actual section dealing with functional abilities is subsection 21(5).

**Ms Lankin:** Mr O'Toole, that's the section he's talking about. Section 36 is what the presenter's talking about. You guys are trying to get it off on the functional abilities form. That's not what people are concerned about. It's sections 36 and 37. Ask and answer that.

**The Chair:** If I may, Mr Seiler, thank you very much for coming this afternoon. We appreciate your taking the time to share your thoughts with the committee.

1700

#### UNION OF INJURED WORKERS TORONTO INJURED WORKERS' ADVOCACY GROUP

**The Chair:** Our next presenter is the Union of Injured Workers, Mr Biggin. Are you here, please?

**Mr Phil Biggin:** I have two other people presenting with me.

**The Chair:** I see. All right. Welcome, Mr Biggin. Please introduce yourself and your organization and your associates for the record.

**Mr Biggin:** Thank you very much, Madam Chair. I'm Phil Biggin, executive director of the Union of Injured Workers. With me are Marion Endicott and Alberto Lalli from the Toronto Injured Workers' Advocacy Group, which works very closely with us.

The Union of Injured Workers, in association with the Toronto Injured Workers' Advocacy Group, welcomes the opportunity to appear before members of the standing committee on resources development. We do not appear here, I might add — and I've made this very clear in all the speeches I have given — in place of the many injured workers who have been requesting standing before the standing committee.

Bill 99, the current government's proposal to change the Workers' Compensation Act and restructure the Workers' Compensation Board, represents the most drastic change in 82 years.

In 1914 Chief Justice William Meredith, with the agreement of unionists and the manufacturers' association, proposed an employer-funded no-fault system to be administered by an independent agency. Injured workers would be assured security of benefits in return for giving up the right to sue their employer: the historic compromise.



Over the years, this system has been reformed, sometimes for the better, sometimes for the worse, but always in the past governments have been willing to listen to injured workers.

In the 23-year history of the Union of Injured Workers, injured workers had the following opportunities to interact with politicians of all three political parties: 1975, a meeting with the cabinet of Bill Davis; 1980-83, meetings with Tory Labour Minister Bob Elgie in various types of community-type meetings; 1984, Labour Minister Russell Ramsay, also a Conservative, spoke to the injured workers on June 1, after the first major June 1, which occurred in 1983; 1988, Labour Minister Greg Sorbara appeared at two community-based meetings organized by the UIW and TIWAG; 1991-93, Labour Minister Bob Mackenzie spoke at June 1 celebrations; 1995, Labour Minister Shirley Coppen attended a community meeting of 250 injured workers on St Clair Avenue. I can tell you that Labour Minister Coppen was quite nervous when she walked into that room, but as we did when we had the presentation before the royal commission on workers' compensation, we guaranteed that order was kept throughout that meeting, and injured worker after injured worker gave their presentation and explained what this was all about.

Why people are so angry today is because you have refused on numerous occasions — on two different occasions in Toronto, we brought petitions to your office and requested meetings and we were told by your staff that only a majority of up to three people would be allowed to meet with you.

**The Chair:** I have to ask you to take your banners to the back. You are using up presentation time that will be lost. Thank you.

**Mr Biggin:** This government has not been willing to meet with injured workers as a group. On every occasion, except when the Union of Injured Workers organized a meeting in Burlington, which Cam Jackson had no choice but to attend, we have been told that we could only meet with the minister if it was one, two or three representatives.

You know from your own statistics with the standing committee that 700 injured workers in the Toronto area have applied for standing before the committee. Many more we know of who have told us they sent in their applications have not even heard back from this committee. These injured workers will not get a chance to speak on how Bill 99 is going to affect their lives, how it's going to affect their families, how it's going to affect their children and their grandchildren.

We have studied Bill 99 and Minister Jackson's paper. We have made a number of submissions. We are prepared to make submissions on Bill 99, but we don't believe you would be able to understand that until you have heard what the injured workers, who have suffered their blood and sweat, who have suffered through injury and insult, who have lost their families, who have lost their jobs — you would not understand what our presentation meant until we hear from those injured workers.

So we will not be making a formal presentation, as we have in every presentation before the standing committee before today. We will not be making a presentation until

our injured workers have the opportunity to meet with the standing committee and with you, Madam Minister, to express their concerns about Bill 99.

Also, injured workers will be speaking across the province, whether it is formally to your committee or whether it is like today, through a mass action. Workers across Ontario are enraged that while the economic situation at the Workers' Compensation Board improves, you are robbing, like pirates, injured workers' benefits: \$9.3 billion due to the deindexation; \$15 billion in total. This is a disgrace, an utter disgrace.

We will now take the balance of our time to introduce to you the individuals who have not had the opportunity to appear before your committee.

**Ms Marion Endicott:** A small sampling of them.

**Mr Biggin:** Yes, not everybody.

**Ms Endicott:** First, we'd like to call Anna Rizetto. Anna has spoken to this committee under previous governments. She wants to speak to you. Also, she is severely disabled and unemployable. Can you call Anna, please, Alberto? We need the door open; that was the arrangement. They know. We have it arranged and the crowd will be quiet while these people come in.

**The Chair:** The reason we're keeping the door closed is for quiet, so we can hear. If she can come in and the doors — then that's not a problem.

**Ms Endicott:** We have to let the people in. We weren't able to arrange to get the people in. I tried to get out there previously to prearrange it and I was not able to get out.

**The Chair:** As long as we can hear, it's not a problem. It's okay.

**Ms Endicott:** Anna Rizetto, although she is severely disabled and unemployable, is one of those people who was not qualified for the special supplement approved by a previous government. If you were to listen to her, you would better understand the difficulties of living on a very restricted income and you would better understand the severe implication of not reintroducing full cost-of-living protection for injured workers.

1710

**Mr Alberto Lalli:** Miss Teresa Kesek wanted to speak to this committee on the specific problems of new immigrants. Although well educated in her own language, she didn't start a claim because she didn't know English and she didn't know about the system. She was advised years later and put in a claim about three years after the accident occurred. Her accident was granted and benefits were coming. The new bill you are putting on and the new system you are trying to create will mean that this woman, even though she was legitimately injured on the job, would not get even initial entitlement with this new bill.

**Ms Endicott:** If Dante Lerra is here, could you please stand up and come forward? Mr Lerra was a mechanic who kept working despite his injuries, through many years. As a result of continuing to work, he increased his injury to such an extent that he could not continue to work, but by then much time had passed. Because there was no time limitation on putting in claims or appeals, he was nevertheless able to pursue his claim and he continues under that process. Under Bill 99, he would not be

able to pursue his just claim. Why? Because he was a persistent worker, because he continued working despite his pain.

**Mr Dante Lerra:** I used to work all the time with the pain. After surgery I went back to work; I asked the doctor to do it as soon as possible to go back to work. But since 1992 I can't do my work any more. I went to Compensation because I got hurt on the job and Compensation says, "You have to go with Employment." Then to Employment, I say: "Employment is going to be finished. What am I going to eat?" He says, "Well, you go on welfare." That's what the adjudicator told me.

**Mr Lalli:** Mr Eddie Cauchi is a well-known individual to many people. He worked at Johns-Manville for about 25 years. What he got after that was asbestosis. He is the chair of the Asbestos Victims of Ontario, and as the chair he fought for many years for the independent studies of occupational diseases, first with the royal commission on asbestos and then with the Occupational Disease Panel. If he had had the chance, he would have spoken to you about the destruction of the Occupational Disease Panel and how this new Bill 99 will send all the injured workers suffering from different occupational diseases back to the age when they — the same as the asbestos victims of Johns-Manville.

**Ms Endicott:** Next we have Mr Max Bryant. Max, will you stand up? To be denied the opportunity to speak to this committee is the second time Max Bryant will be denied the opportunity to speak to this government. He was one of the people who spent many hours preparing a speech to the Honourable Elizabeth Witmer and then, at the last minute, when he went to attend the meeting, the meeting was cancelled. Now he is not able to make a presentation again.

Max is a survivor of six accidents at work, including a blast, before he simply could not continue to work any longer. He wanted to work so much that he even went to work tending his blast furnace with a slipper on instead of his safety boots, because the safety boots would not fit over his swollen foot.

If Max were given an opportunity to talk to you, what he would talk about is the problem of putting the return to work in the hands of the employers themselves. Putting this whole business of self-reliance between employers and workers simply will not work. It will be an abuse of injured workers.

**Mr Lalli:** Mr Domenic Acierno: Mr Acierno is concerned about the future of injured workers. If he had had the chance, he would have spoken to you about what this bill would have meant to him. In his own words, when he had his compensable accident, if Bill 99 had been in place he would have been cooked. For one thing, he owes the recognition of his condition after many years to the independent WCAT. Mr Acierno would like you to understand the realities of invisible injuries or chronic pain and how difficult it will be — I mean impossible — for injured workers to be covered for conditions when the WCAT loses its independence.

**Ms Endicott:** We're already quickly running out of time and we've only gone through, I don't know, one eighth of the injured workers we were hoping to call in today. I'll just begin to read out their names.

Mr Xinos is here. He wished to speak to you about the incredible devastation of not having the cost-of-living increases back on to the pensions.

**Mr Lalli:** Mr Giovanni Fuoco, who is receiving a supplement under section 147(4) plus the \$200 supplement given by Bill 165, and he was protected from the indexed section of the Friedland formula. With Bill 99, he loses that protection.

**Ms Endicott:** Mr Chuck Murray, who fell six storeys when he was 18 years old as an apprentice. It took the independence of the Workers' Compensation Appeals Tribunal to establish what his earnings basis should be, despite board policy.

Rodolfo Cuzzetto: He cannot be here today because he died of lung cancer in 1985. His family only received compensation a year ago and they wish to speak to this committee about the problems of getting industrial disease recognized.

**Mr Lalli:** Mr Mario Cerra: He wanted to talk to you about the problems of returning back to work before injuries heal. It happened to him. He was re-injured and his disability was even worse. Bill 99 will make this commonplace.

**Ms Endicott:** Mr Banni Bhattaharjie, Mr Generoso Ardenete.

**Mr Lalli:** Mr Jerry Sewerynek.

**Ms Endicott:** Mr Nick Damianos.

**Mr Lalli:** Mr Louis Sotiropoulos, who had an accident and didn't report it because his employer asked him not to do it and paid for every day that he will stay without doing anything in the work. The problem is that he developed a permanent disability. He would like to speak to the committee about — Bill 99 will be doing exactly the same that happened to him.

**Ms Endicott:** Barbara Pyczot — most of these people are stuck outside, that's why they're not coming forward — and Manuel Espinal.

**Mr Lalli:** Mr Ivan Mejia, another one who was an immigrant one and filed his claim two years after the injury.

**Ms Endicott:** Antonio Sciciliano: Antonio was working here for 32 years and had many accidents as well. He also, like all these other workers, very much wants to come to speak to you. I believe he might be one of the few who actually has a number in response to the letter that he wrote some time ago requesting a hearing. He would like to talk to you about the financial troubles of the WCB and how it is that there is a bank account of \$8.5 billion.

**Mr Lalli:** Dimitri Petropoulos, Charoula Theofilkidis and Ana Pavela: All of them appealed the decisions past the limitation period that Bill 99 is putting in place. That means that if Bill 99 would have been in effect in their cases, they wouldn't have gotten any benefits.

**Ms Endicott:** I've finished mine.

**Mr Lalli:** Mr Constantine Parlanis and Matt Mandziak, also affected for limitation of appeals.

**Mr Biggin:** That's just a very short list of workers who have asked to present before the committee and would certainly like the opportunity to speak to the Minister of Labour about their views of workers' compensation and the reform in Bill 99.



We're very serious about these reforms. We've been working on this system for 25 years now and we don't like the fact that there's a total of probably less than 10 hours in Toronto to hear the concerns, and only half of those are going to be what we would say were labour reps or injured worker reps. Where does that leave the injured workers? This is what the system is all about. This is what Sir William Meredith was talking about when he set up the system originally.

I don't think it's right to take a direction that is so totally opposed to the interests of the injured workers, who represent quite a large proportion of the population. If you look at the working population of Ontario and the potential for injury, and you're trying to take away from the future injured workers the right to compensation, this is not a just system and it is not a system that is going to succeed.

**Ms Endicott:** What we want to ask today is whether the committee will give more hearing time so that it can hear from these injured workers. Specifically our request is for one day, which has been the tradition with this committee, set aside at the end of the hearings after you've travelled around the province, whenever you want, in September. We are not particular about the time. We can have a big room and we can make the presentations and we can bring these people up. We can bring Max Bryant up and bring Mr Xinos up and bring all these others up so that they can tell you their story.

If you listen to them, you will begin to understand what the problems are in Bill 99. If you do not listen to these workers, you cannot possibly have an inkling of what sounds good on paper, what sounds good when the minister presents her introduction to it. You don't see the details until you hear these people's stories, so we come to you here today to ask for that special day.

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**Mr Biggin:** The one thing you should be aware of is that we have a track record in performing this. If you need a reference, you can ask Marg Rappolt, who's very familiar with how we went about organizing a public meeting on the Royal Commission on Workers' Compensation. It was very well disciplined, people got a chance to speak, and everybody on the panel was treated with utmost respect. What we want for injured workers is the right to stand up and explain to you precisely how this is going to impact their lives and the lives of their children and grandchildren.

**Mr Christopherson:** On a point of order, Madam Chair: In light of what you've heard and in light of the fact that all of the people who are here today represent injured workers and their concerns, I would like to move that the committee, all the committee members, recommend to the House leaders that we reconsider the schedule and allow for such a public meeting. It's been done before; it's not precedent-setting. It allows people who can't even fit into this room to at least be a part of the proceedings. I implore members of the government to please set aside your party alliance and listen to the concerns of these injured workers and let that motion go through.

**The Chair:** As you probably know, you cannot make a motion on a point of order. That would have to be something done while you have the floor at another time.

**Mr Christopherson:** Then I ask for unanimous consent to be allowed to make such a motion.

**The Chair:** Do I have unanimous consent for that motion to go on the floor? I hear "no."

**Mr Christopherson:** Ted Amott said no. Way to go, Ted.

**The Chair:** Not at this time. Mr Biggin, our time has expired and I would like to thank you for coming forward. I just would indicate that at any time while the committee is sitting we are very open to letters or any correspondence. You may address it to the Clerk and it will be copied to all members. Thank you very much, Mr Biggin.

## ONTARIO FEDERATION OF LABOUR

**The Chair:** Mr Gord Wilson, would you come forward, please? Is Jim Pare joining you? Welcome, Mr Wilson. Your presentation time is 20 minutes. If you would introduce both of your colleagues for the Hansard record, please.

**Mr Gord Wilson:** As you have observed, I'm joined by Mr Jim Pare, who is the director of organization for the Ontario Federation of Labour and has specific responsibility for the Workers' Compensation Board and for the appeals tribunal. He has years of experience as an injured worker advocate. I also have with me Vern Edwards, our director of occupational health and safety at the federation, who enjoys the same level of expertise in his field of endeavour as does Mr Pare.

We are here today to speak on behalf of, first, injured workers, those in the future who also will be injured who have not yet been injured in Ontario's workplaces, and of course for the survivors, the families of those workers who unfortunately have been a statistic through a workplace fatality.

I usually thank government standing committees for the opportunity to appear before them because I have been given an opportunity to make input into important decisions by the government which will affect our 650,000 members and their families. However, given the mockery that this government has made of the hearing process for Bill 99, this would not, in my belief, be appropriate. In fact today we have heard on at least two occasions that the government has had deaf ears to the pleas of injured workers, many of whom have joined us in this room, who were simply asking to be heard. The government's reaction of course is not only unprecedented but I would characterize it as being unfair.

The federation has not prepared a formal brief to be left with the committee. This is the first time in my tenure as president of the federation that I can recall that we have done this. We believe the behaviour of the government has been nothing less than cavalier, bordering on insolent, regarding legislation which establishes now a criterion which makes it operational for employers to maim and to kill workers as opposed to preventing injuries in Ontario's workplaces.

This legislation, if passed, will make Ontario statistically the safest place on earth, while workers will be forced to suffer in silence, forced to work injured or be fired, accept exposure to hazardous substances, with their injuries and illnesses never being reported in the system.

I don't believe — and I am sincere — a submission by the Ontario Federation of Labour would even be read by the Minister of Labour or by the government members on this committee. Not one proposal that we have made on behalf of our 650,000 members and their families has been incorporated into the torrent of anti-worker legislation introduced by this government over the past two years.

Let me be clear: This government seeks no compromise nor does it seek any balance. It seeks to create a labour relations environment in which all of the rules are stacked in favour of the employers, a throwback to the turn of the century. In point of fact, these hearings are little more than a public relations stunt for the government. One hundred and thirty people will be allowed to speak, out of 1,300 who have asked to be heard here today. The government has attempted to keep these hearings secret and has refused to advertise their existence in the media, unlike past governments in similar circumstances of all political stripes.

The plantation overseer is now in absolute control; and talk about Newspeak. George Orwell would be ecstatic about the proposed new name for the Workers' Compensation Board: the Workplace Safety and Insurance Board. To use the word "safety" in legislation such as this is an insult to workers who put their lives on the line for their employers everyday. The more appropriate description for Bill 99 would be the future bill of worker dismemberment and fatality.

The legislation places more emphasis on programs like the board's current experience-rating programs, in which the reported accident frequency and the claims cost have a direct affect on the kickback employers receive from the board each year. Experience rating is designed to distort accident statistics through the suppression of claims. According to its last annual report, not ours, the Workers' Compensation Board paid out more in employer kickbacks, a total of \$359 million, than it paid to injured workers with new claims, a lesser amount of \$337 million.

Bill 99 eliminates the template of best practices in the current act and replaces them with mechanisms which make it more profitable to intimidate workers and to suppress claims than it is to prevent injuries. Bill 99 will enshrine the concept of employer avoidance and discourage compliance in the interests of reduced employer costs.

Bill 99 forces workers to ask their employer for a form in order to make a WCB claim. This will be the employer's first opportunity, if they wish, to intimidate a worker not to file a claim. In non-union workplaces, I submit, claims will often not be filed in these intimidating circumstances because the worker will feel under threat of discipline or perhaps even job termination. Under the current system of WCB claims, the claims process starts immediately after the claimant's doctor determines that an injury is work related.

I ask the government members here today, how will the 24% of people who can neither read nor write at a grade 9 level cope with the form that you are presenting? In how many languages will it be available? If the government's claim is that Bill 99 has been well thought out then tell us today, how many languages will these new forms be printed in? Surely you must have the answer. Anyone here knows the consequences of making an error on a government form.

My point is, this legislation has made it easier to intimidate an injured worker from filing a WCB claim than it would otherwise have been to prevent the injury in the first place. If no record of injury exists, the employer's experience-rating kickback will increase. Workers are injured and the employer is rewarded with a larger kickback from the board. It's a good deal for employers but it's a bad deal for injured workers.

For those workers who are successful in making a claim, the legislation introduces a new punitive wrinkle. The injured worker's physician will be forced to provide medical information about their patient's injury to the employer without the worker's consent. The current act protects the integrity of the return-to-work process by requiring the worker's consent before medical information about the injured worker is released to the employer.

#### 1730

Physicians have no objection to providing employers with useful functional-abilities information if the employer has a good return-to-work program in place. When physicians are forced by Bill 99 to provide this sensitive medical information to employers without proper accommodation expertise, they will do what they must to protect their patients. Family physicians tell us they will indicate "no functional abilities" on the board's form rather than send their patient back to some employer pretending to be a physician who has never put their mind to accommodation or to ergonomic issues.

Appropriate and useful accommodation programs are good prevention programs. They foster an ergonomic approach to prevention. Bill 99 assumes that every employer has an effective accommodation program and somehow anticipates that forcing physicians to provide private medical information to employers will improve a worker's return to work.

It gives the power to the board under section 37, as we've heard, to reduce or terminate workers' benefits — pardon me, under another section — if they don't return to work at their employer's call. Early return to work, injured or not, reduces employer costs, and we all know that this Bill 99 is about reducing employer costs, nothing else: \$6 billion to \$9 billion worth out of the pockets of injured workers in Ontario. Workers will be forced to return to work before they are ready. Bill 99 makes forcing workers back to work through punitive return-to-work programs cheaper and easier than preventing the injury in the first place.

The term "ergonomics" will be a forgotten concept. Workers will be placed in dangerous and frightening situations as the injured are forced back to work prematurely. The employer's experience rating kickbacks will be juicier and they will be fatter. Employer praise of Bill 99 will no doubt be welcomed by this government.



Bill 99 extinguishes the Occupational Disease Panel which conducts independent research on workplace diseases. This panel has saved the board millions of dollars in expenditures by identifying the relationship between disease and the workplace. By knowing the cause, we have been able to prevent future diseases from occurring. Terminating the ODP is consistent with other purposes within this bill. All you do is paper over the problem and suddenly it no longer exists. Workers will die from exposures and no one will be able to make the workplace link. The costs will be offloaded to our social programs and to our health care system. The government plan will be working and another chorus of employers will sing yet again the government's praises.

Collectively, the employers' experience rating kickbacks increase while workers and their families pay the real price of occupational disease: poverty, disability, suffering and death. The volume of employer praises would drown out the sounds of the tears of families who have lost a loved one.

Then there is the most important emerging health issue of our time, the issue of chronic workplace stress. As new technology is introduced into the workplace, workers believe it is important to evaluate its impact upon the people who work there. We are producing more than ever before, assisted by technology. Things are happening faster. Work may be less physical, but it has become far more stressful.

The authors of Bill 99 know all of this. They know that the workplace stressors are identifiable. They know that the medical documentation from every authoritative source on this planet documents and identifies workplace stressors. We know the causes which lead to psychological disability, and because we know the causes, we can prevent them, but this government's plan is to avoid, not to identify.

The Minister of Labour and her government have chosen to facilitate more stressful workplaces by eliminating compensation for chronic workplace stress. Employers have been given the green light to ignore the prevention of these disabilities. Bill 99 encourages employers to harass and to intimidate workers because they know it can be done with impunity.

Again, when these injuries no longer exist statistically, the employers' experience rating kickbacks increase yet again. Life is good for employers in Mike Harris's workplaces of Ontario, just like the good old days before civility. It won't, however, be good for workers and for their survivors. It will once again be a horrible and dangerous experience.

There is not enough time to touch on other significant punitive provisions in this legislation; others will. I believe our emphasis today had to be upon what soon will be literally life-and-death situations in workplaces across the province.

This legislation makes it less likely that our members can return home from work in the same condition in which they reported for work, healthy and safe. This legislation rewards employers handsomely for ignoring injury prevention. And make no mistake about it: Bill 99 contains no health and safety prevention provisions at all,

outside of perhaps a passing reference in the purpose clause.

Ontario will become statistically the safest place on earth, while in the real world of the workplace, workers will be forced to work while injured, while being maimed, killed and exposed to hazardous substances in the interests of the government's quest for a profitable, business-friendly environment. Like Premier Harris has often said, Ontario is open for business. He forgot to mention that the graveyards of the province will be the busiest.

There are many other repugnant and dangerous aspects of this bill which reflect employers' demands, including reducing the inflation protection of unemployed workers with disabilities by 75%; forcing workers to undergo risky operations or take drugs which they prefer to avoid because it is cheaper than the treatment recommended by their physician; privatizing vocational rehabilitation so that making a profit from a worker's misfortune becomes a higher priority than the worker's wellbeing; cutting future disabled workers' pensions in half when the government knows full well that most injured workers do not have any access to an employer pension plan; cutting benefits from 90% to 85% of net pay for no apparent reason other than to demonstrate to employers that this is a get-tough-with-workers piece of legislation; setting arbitrary time limits on one of the most debilitating disabilities, chronic pain — why limit yourself to getting tough when you can play God with a worker's physical condition; eliminating the independent appeals system and placing WCAT decision-making under the control of an employer representative appointed by this government; deeming workers to be able to obtain jobs which are not available and then setting their benefit levels in the pretence that a job is available.

Bill 99 is a direct attack on workers and their families: no more, no less.

I was in a taxi the other day and the driver said to me, "Usually it is the people who hate the government, but it seems with the Harris government, it is the government which seems to hate the people." The contents of Bill 99 stand as stark testimony to the truth of that cab driver's observation. Bill 99 has but two objectives: first, to cut workers' benefits, and correspondingly, secondly, to reduce employer costs and liability for those workers injured and killed in their workplaces.

This action by the provincial government surprisingly comes at a time when the board has achieved a \$1-billion surplus over the past three years, has never borrowed a dime in its history, will eliminate its unfunded liability in approximately 15 years and has more than \$8 billion in the bank.

Welcome to the new Ontario, a place where fairness and justice and equality no longer have any currency, a place where survival is based upon wealth and upon power, a place where we have now returned to the past and a place where past divisions will once again recur.

One final note, if I may. To me, it is tragic that this government has lost sight of one simple truth: Laws are enacted to protect workers precisely because in the absence of such laws employers will act in their own exclusive self-interest, and often to the detriment of

workers. They have in the past and they will once again as Bill 99 empowers them, if the government succeeds in passing this vindictive and punitive legislation. I would say to the members of the government, the government must therefore accept the responsibility for each future act of employer self-interest which results in a worker's injury or in a worker's death.

My final comment to the government members: When this happens, I want to assure you that the injured workers and those of us who care about them in this province will be there to remind you of your responsibility in this situation.

**The Chair:** We have about three minutes remaining in the presentation time, so the questions and answers will have to be brief.

**Mr Doug Galt (Northumberland):** Thank you for your presentation. I'm just curious on a couple of statements I have here and your response to them. During committee hearings here in 1994, as quoted in Hansard, "This federation does not willingly endorse the Friedland formula or anything else that would reduce benefits," a quote that you made at that time. Recently, the member for Beaches-Woodbine stated on May 1 during debate of this particular bill: "I would also point out that the Friedland formula was arrived at through an extensive set of discussions and negotiations...between employer representatives and injured workers and union representatives. It wasn't easy for anyone around that table, but we worked it through and we came to a consensus. That was endorsed by the Ontario Federation of Labour."

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**Mr Wilson:** I accept your observation that you apparently are opposed to consultation with all parties involved. I mean, do your homework, my friend. If you did, you would know that when we dealt with the PLMAC, which was equal numbers of employers and ourselves in this province, in consultation and with the participation of injured workers, we excluded from the Friedland formula those people who would be most adversely affected by the impact of it. Overwhelming. I think, if my memory is correct, 90% plus workers who would be impacted by the Friedland formula were workers who were receiving pensions and had returned to work. We made sure it did not impact upon any of those workers who were caught up in 147(4), I think it was, Jim, or those who were 100% disabilities and couldn't return to work or the survivors of those persons.

I want to also add that what was given to those people immediately was a \$200 increase in their pension, recognizing how tough they were facing out there. If you did your damn homework, you wouldn't ask such a stupid question.

**Mr Patten:** Mr Wilson, thank you for your presentation. It's quite eloquent. My question, with only a minute: You identified a number of areas where the suppression of claims is. By that you mean that the test will be severely reduced and therefore there will be less, so the statistics will show up as the best, healthiest workplace in Ontario statistically because those people who don't qualify are on welfare or other disability programs. Is that your —

**Mr Wilson:** I'm sorry. I was having trouble listening to your question. I was having trouble hearing you.

**Mr Patten:** I thought your point was quite poignant in saying that if you reduce the criteria and make a more difficult test, which the legislation has done, you'll have people who don't qualify but are still injured and still needing support out there. So the statistics may be glorious, but the fact remains that you have more people who are in need of support programs.

**Mr Wilson:** I'll just check with Jim. We're not off the wall on this. Back in 1986-87, I think it was, we had a task force that roamed this province in which a number of people participated. What showed up, for example, in addition to what we talked about today, is employers who were saying to mostly single parent mothers: "You've been injured at work today. I'll give you a choice. You can either receive an S&A benefit which is substantially less than your workers' compensation benefit or you can file a WCB claim and we will appeal the claim at every stage so it will be literally months before you're given a cheque."

If you're a single parent with a couple of kids, I want to tell you, that's a pretty hard choice: principle or eat. To the courage of most of them, they said, "To hell with the employer," and they took them on. What I'm afraid of is you're going to run into the same situation here. I can tell you I participated in a meeting back in the 1980s when a major employer in this province said in front of a group of employers and ourselves, "I'm sorry, but we don't record half the injuries that occur in our workplace."

**Mr Christopherson:** We have sat in the House and watched this government unleash a flood of anti-worker legislation, both anti-union and anti-non-union worker: with Bill 7, where scabs are now legal again; they took away successor rights to OPSEU workers in the tee-up to privatizing all those jobs; they've now, in this bill, eliminated what they started to eliminate in Bill 7, which was the employee wage protection plan; Bill 49, which took away rights of workers under the workers' bill of rights; Bill 15, which took away a 50% say in how the WCB is operated; Bill 136, which has now launched a major attack on municipal workers, school board workers, hospital workers.

Yet every day, Gord, we watch the Minister of Labour in the Mike Harris government stand up and say that they're fair, they're balanced, they want to create a climate where everybody gets along and where business wants to invest. I want to ask you for the record, Gord, what is the current state of the relationship between the labour movement, workers and this government? What is coming down the pike in terms of the future? And what does that mean, really, for jobs in the future in Ontario?

**Mr Wilson:** It's hard to say what's coming down the pike because we don't get consulted. I can say in honesty, with the minister present, that the number of conversations I have had with this government and with this minister are substantially less than I have had with previous governments. I've talked with my predecessor, who tells me that almost on a weekly basis he spoke with either the Minister of Labour or the Premier, Premier



Davis. I'm sure if Bill Davis were here, he would support that position.

It's difficult. We had to make a decision very early on, as I've tried to indicate in these remarks, that there's no point in us leaving a logical argument here with this government because they aren't likely to adopt any of the suggestions we make. I say to the government members on the committee, "Name one." We're met with silence. It's unfortunate, but it also is the reality. I think it is partly responsible for the emotional outbursts you have seen from people today, in that government is exclusive to them; there is no inclusiveness except in the tight circle of folks.

I finally want to say, Mr Christopherson, that I appreciate very much the comments you and members of the opposition have made in support of us and the injured workers here today. It's a tragic fact that they have fallen upon deaf ears.

**The Chair:** You have to wrap up.

**Mr Wilson:** I want to conclude with one comment. If you want to throw me out, Brenda, go ahead.

**The Chair:** No, I just want you to finish on time. We have another presentation.

**Mr Wilson:** That's good, because the Speaker didn't do it and I didn't think you'd do it either. I just want to say to the minister — Minister, if you'd look at me, please; thank you — you have heard a number of citizens in this province who are working people, who are hardworking people, who have run across an unfortunate incident in their workplaces. They have been hurt. What they have asked you for today is, simply, dialogue.

Like others before me, I'll make one more appeal. Minister, can you give them the assurance today that you will hold a meeting with the injured workers in this province at some place big enough to accommodate them and listen to their stories so that, as the group before me said, if you listen to their stories, you might understand what this legislation is going to do to their lives.

Minister, please — to the members of the government on this committee I ask you please to try and persuade the minister and the cabinet — listen to these working people who have been hurt in the workplaces. If nothing else, their citizenship ought to entitle them to an opportunity to be heard in Ontario about what their lives are going to be and what the future of their families is going to be.

#### EMPLOYERS' COUNCIL ON WORKERS' COMPENSATION

**The Chair:** I'd like to call upon Mr John Blogg to come forward, please, from the Employers' Council on Workers' Compensation.

**Mr Christopherson:** On a point of order, Madam Chair: I've been advised there are camera crews that have been trying to get in that aren't being allowed in. I think that goes way beyond any idea of trying to maintain order in this room. I'd ask you to find out if there are, and if there are, to let them in.

**The Chair:** If there are problems it's only because of the volume of people moving in and out of the doors and the noise. I think probably there will be an opportunity

for that to occur once we have a little bit of space and the congestion is cleared at the door.

**Mr Christopherson:** The problem with that is that it leaves the impression the media are being deliberately kept out.

**The Chair:** No, that is not at all —

**Mr Christopherson:** I'm asking you to look into that to ensure that if they want in, they're getting in.

**The Chair:** I will look into it, but it's not the case to my knowledge.

1750

**Ms Lankin:** They're out there right now. They have sent in notes saying that they have not been allowed in. What I would like to ask you to do is to give a direction to the staff to let them in the room now.

*Interruption.*

**The Chair:** Welcome, Mr Blogg. We're a bit behind. We apologize for that. If you would be so kind as to introduce your colleagues for Hansard and for the members of the committee. You can begin when you're ready.

**Mr John Blogg:** My name is John Blogg and I'm vice-chair of the Employers' Council on Workers' Compensation. I'm also the secretary and manager of industrial relations of the Ontario Mining Association. David Frame is executive vice-president of the Council of Ontario Construction Associations; Michael Warren is a consulting actuary with William M. Mercer; Mike Burke is with the Ontario Trucking Association; and Bob Gautreau is senior safety consultant with Metropolitan Toronto.

I guess we cleared the room.

The ECWC is a non-partisan coalition of employer associations, employers and experts in the workers' compensation field. Our members represent all aspects of the economy and large and small employers. Since 1984 the ECWC has been active with the board, the tribunal and the government on all facets of the Ontario workers' compensation system, working with these agencies to attempt to ensure that an effective and sustainable workers' compensation program is delivered. A complete list of our members and mission statement is included in the materials that have been handed out.

Overall the council strongly supports Bill 99, providing some needed changes occur. We view Bill 99 as an intelligent refinement of the last three major reforms, initiated by past governments from all three political parties. The themes introduced over the last decade or more continue to be respected and improved upon. We are encouraged by the changes to the benefit delivery model which address many of the shortcomings of the present future economic loss process, and by the renewed emphasis on employer accountability and focus on worker accountability.

For the first time in memory a political party studied the issue extensively while in opposition, set out a comprehensive platform for reform, campaigned on that platform, and began to deliver immediately upon attaining office.

Bill 99 represents the culmination of a long, thoughtful process aimed to advance the interests of workers and employers alike. Many critics simply refuse to acknowledge the sorry state that the Ontario workers' compensa-

tion system has become, and offer little in the way of solutions. If one is able to get past the highly charged rhetoric, an honest assessment of Bill 99 shows it is not a radical change, but instead a fine-tuning of recent reforms initiated by all three political parties over the last decade and a half.

Bill 99 is not, as some claim, a free ride for employers. In fact, with the emphasis on accident prevention and rehabilitation, individual employers will see assessment rates rise dramatically, sometimes exponentially, if they don't get the message. Bill 99 increases the individual responsibility of every employer and sets out, in no uncertain terms, a far higher standard for corporate behaviour, with increased penalties for those who don't meet the standard.

For the first time, expectations for interaction and communication between the stakeholders are set out in the law. Employers and workers are expected to cooperate more, to work together and to ensure return to work. This is the essence of Bill 99, in our view, increased accountability with a focus on cooperation.

Before we begin our assessment of the Bill, it is fitting to take a moment and review the actual need for reform. It must be remembered that during the last election campaign, both the Liberals and Progressive Conservatives made WCB reform an issue, and for good reason: While accident rates were decreasing, employer assessment rates were up and the unfunded liability continued to grow. The NDP had just implemented an initial attempt at reform through Bill 165, followed by a royal commission, suggesting there was more yet to do.

Contemporary political action by all three parties has therefore recognized the undeniable case for reform. Between 1983 and 1994, the WCB's unfunded liability increased by a staggering 470% from \$2 billion to \$11.4 billion. It presently sits at \$10.5 billion. Yet, from 1985 to 1994, while accident rates actually decreased 33%, from 186,000 to 125,000, employer assessment rates rose by 46%.

To those who think more money is the answer, this has been tried and it failed. As an example, starting in the 1980s, business accepted what then was thought to be a workable, but painful plan, to increase employer assessment rates by 15% each year for three years, followed by 10% increases each year for another three years — that was all over and beyond additional inflationary adjustments — with the understanding that the unfunded liability would be eliminated by the year 2014. And it seemed to be working. As early as 1987 the WCB reported the plan was on schedule; two years later the board actually projected the unfunded liability would be eliminated seven years ahead of plan, and all business had to do was to keep accident rates at their 1989 levels.

Business did better than that. Since 1988 the number of lost time accidents in fact have decreased by over 43%, and the average duration of lost time claims decreased significantly from 110.8 days in 1991 to 68 days in 1995.

Yet now even the best projections suggest that without further reforms the unfunded liability will top \$14 billion by 2014, when it was supposed to be zero. Remember,

money that goes to the unfunded liability is money that can't go to help workers hurt today.

While all this was going on, benefit expenditures more than doubled from \$1 billion to \$2.3 billion and the number of WCB staff increased 24% from 1984 to 1994, from 3,700 to 4,600. The overall cost of administering fewer claims increased 79% from \$185 million to \$331 million. Today, Ontario alone now accounts for 77% of the total unfunded liability of all Canadian jurisdictions, but only 29% of the total lost time claims, and is second only to Newfoundland in having the highest average employer assessment rates.

WCB taxes are job killers, pure and simple. The promised WCB reforms will create jobs for Ontario, and that's according to a DRI/McGraw-Hill study sponsored by the ECWC and released last spring. The study suggests a reduction in the average rate of assessment to \$2.32 per \$100 of payroll would generate 33,000 jobs. This \$2.32 is still higher than the \$2.25 mean rate of the 11 other compensation systems in Canada. We should point out that the board lowered Ontario's average assessment only to \$2.85, and while some companies will see rate declines, much of Ontario business will see rates rise.

In fact, in 1997, 74 industries or 34% of industry rate groups saw assessment rate increases. For example, labour supply firms saw rates go up 86%, nursing homes 40%, home builders 22% and steel foundries 10%, to name but a few. Many will continue to see rate hikes in the future. Based on 1997 figures, for example, ambulance services will see a 34% future increase and nursing homes an additional 28%.

It is a myth that assessment rates for all businesses are being reduced. What is being implemented, however, is a fairer distribution of assessment, based on company and industry performance. Very simply, to the employers the government is saying, "If you cost more to the system, you're going to pay more."

The initial plan was to reduce the average target rate of assessment by 5% to \$2.85 by this government. Although clearly this was a welcome first step, a reduced rate to \$2.85 is still the second highest in Canada, and when compared to provinces such as BC, Manitoba, Alberta and New Brunswick, it becomes readily apparent how far Ontario still has yet to go.

#### 1800

In considering reform, the issue is not to lower costs to lower assessments, but to ensure that the system fairly and equitably compensates workers and taxes employers. The taxation levels for employers and the wage replacement levels for workers must be equitable.

To further illustrate the need for reform, let us look at but one example, the present wage loss benefit model. In 1990, the Liberal government's Bill 162 introduced a new and welcomed method for compensating long-term disability. The old meat chart system was rightfully abandoned for a more individualized approach focusing on a worker's actual wage loss. However, while the original intent of the FEL system was commendable, significant new problems quickly emerged. Systemic and unintended but unfair overcompensation for workers who returned to their pre-injury wage levels materialized. The following examples represent actual cases.



In case 1, the worker was granted a FEL award on June 13, 1994, in the amount of \$1,267.66 but returned to regular work with no wage loss three months later. Under the current law, the worker continued to receive full salary plus \$1,267.66 a month for another 21 months, a perfectly legal windfall of \$26,620.86, tax-free. The worker had net earnings of \$2,902 before his accident and net earnings of \$4,169 post-accident.

In case 2, the worker was granted a FEL award on July 1, 1993, and returned to regular employment at no wage loss on January 3, 1994. The worker received \$959 per month for at least 18 months for a total overcompensation of \$17,262.

In both instances, the law was applied properly. Bill 99 addresses this inequity by simply requiring that the benefits adjust when the worker's circumstances materially change. This is simple fairness. Certainly no one supports workers getting more on compensation than when they are working.

Many have argued that the unfunded liability is no longer a problem and is, if we understand the argument, simply a smokescreen for unneeded reforms. Yet about 30% of all of the assessment collected from Ontario employers goes towards the unfunded. Again, while Ontario accounts for only 29% of Canadian lost time injuries, it owns 77% of the total national unfunded liability.

Those suggesting that recent declines mean the problem is resolved are being, we must suggest, shortsighted. Our analysis suggests that there are really three reasons for the decline in the unfunded liability: (1) as a result of better than expected investment income; (2) as a result of lower than expected inflation; (3) as a result of fewer accidents.

The reduction in the unfunded liability is entirely the result of the net effect of annual fluctuations experienced, gains and losses, and relates to experience parameters affecting existing claims, or the number of new claims in the current year compared to expected. Future assessment rates will be set to match expected future accident rates.

In relation to the expected level of the unfunded liability, it must be appreciated that with an unfunded liability of between \$10 billion and \$11 billion, it is not uncommon to have fluctuations of a few hundred million dollars annually in relation to expected levels. It is not the result of any systemic change. The unfunded liability continues to represent a burden on future employers who have to pay an extra 88 cents in their rate over and beyond the cost of current claims.

Looking at the history of the unfunded liability in Ontario and the efforts to get this under control shows that over 14 years ago, when the WCB said it was getting serious about the unfunded, 50 cents of every assessment dollar was allocated to the unfunded. Today, after a decade or more of assessment rate hikes, after a dramatic reduction in accident rates and time loss on claim, it's up to 88 cents. This represents, based on the average rate of the board, almost \$500 per worker and is money diverted from looking after workers who are hurt today. Therefore the problem, in our view, has hardly been solved.

When looking at Canadian jurisdictions, it becomes clear the Ontario reforms are not at all out of place.

New Brunswick decreased its average rate of assessment in 1995 by 18% to a rate of \$1.70, but was still able to reduce its unfunded liability, which soon will be eliminated. During this time, New Brunswick decreased the benefit rate from 90% to 80% net earnings rate, with 85% for workers who were off over 39 weeks, and they added a three-day waiting period.

In Manitoba, through Bill 59, which was effective January 1, 1992, they excluded stress claims and diseases of ordinary life and limited claims past 24 months to 80% net earnings from the previous 90%. Manitoba has managed to nearly eliminate their unfunded liability while keeping a rate at \$2.15 per \$100.

Alberta eliminated its unfunded liability, which was \$277 million in 1993, to a better than balanced position of \$271 million in assets over liabilities in 1995. It still maintains one of the lowest average assessment rates in Canada. In 1995 the rate was \$1.97, and in the previous year, 80% of Alberta's employers saw their rates drop. Interestingly, the Alberta WCB's commitment to run more like a business has made the difference, with more efficient administration and better accrued investments.

Bill 99 does not radically alter the workers' compensation landscape. In fact, the basic tenets survive and are strengthened. What it does is bring forward new expectations of cooperation and communication between employers and workers, along with a renewed sense of accountability.

While we support the general themes of the bill, it is not perfect and some changes are required. We are disturbed that the three-day waiting period was not introduced and that appropriate changes were not made to the definition of "accident." Both of these were longstanding Progressive Conservative Party of Ontario commitments and we encourage the government to honour these important promises.

Our continued support for this bill is dependent upon some needed redrafting, the most significant of which is highlighted in our report. I will very briefly summarize a few.

Section 40, dealing with the duty to cooperate: While the ECWC supports the emphasis on cooperation, much of section 40, in our view, is redundant. The council rejects the emphasis on fines, which runs counter to Progressive Conservative Party pre-election commitments.

Section 42, dealing with labour market re-entry plans: The labour market re-entry process will work for large employers. However, we are concerned that time on claim may actually increase for medium and smaller employers unless the need for board resources is identified early.

Section 43, dealing with the wage loss benefits: While we support the intelligent refinement of the benefit model that addresses many of the shortcomings of the present FEL process, new pitfalls are introduced. Simply, too much discretion is left in the hands of the board. Other technical problems present themselves, and we encourage the members of this committee to review our full comments.

Sections 46 and 47, which deal with non-economic loss awards: The ECWC appreciates the simplification of the NEL process, but we recommend extending the pre-

scribed time for a reassessment from 12 months to 36 months.

Section 80, subsections (4), (5) and (6), provides a very broad discretion to the board in setting company-specific assessment rates. But, disturbingly, individual disputes are not allowed to proceed to the tribunal. We believe this is unjust and needs to be changed.

Section 95, the special reserve section: We believe that the second injury and enhancement fund must be codified in law.

Finally, section 118 dealing with the tribunal's jurisdiction: While reform of the appeals process is called for, we strongly disagree with the Bill 99 changes and offer a more appropriate model. We disagree with the manner in which the tribunal's powers have been curtailed. We have developed 10 core principles which would ensure that the tribunal plays an important role in auditing board

policy while still ensuring that the board of directors retains control over policy development and its application.

With these changes, the Employers' Council on Workers' Compensation provides its strong and full support to Bill 99 along with its commitment to ensure the successful implementation of this momentous and pivotal piece of legislation. Without these changes, Bill 99 may actually impair the government's ability to attain its workers' compensation reform objectives.

**The Chair:** We have just about a minute and a half remaining in presentation time, I think barely enough time to entertain questions from each of the caucuses. So with your indulgence we will diligently promise to read the report that you submitted to us, and we thank you very much for your time this afternoon.

This committee stands adjourned until Wednesday at 3:30.

*The committee adjourned at 1811.*

ERRATUM

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## STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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Mr Joseph	Spina (Brampton North -Nord PC)

<b>Substitutions present /</b>	<b>Membres remplaçants présents:</b>
Mr Ted	Arnott (Wellington PC)
Mr John	Hastings (Etobicoke-Rexdale PC)
Mr Jean-Marc	Lalonde (Prescott and Russell L)
Ms Frances	Lankin (Beaches-Woodbine ND)
Mr Richard	Patten (Ottawa Centre / -Centre L)
Mr E.J. Douglas	Rollins (Quinte PC)

<b>Also taking part /</b>	<b>Autres participants et participantes:</b>
Mr John	Gerretsen (Kingston and The Islands L)

<b>Clerk / Greffière:</b>	Ms Donna Bryce
<b>Staff / Personnel:</b>	Ms Lorraine Luski, research officer



**Legislative Assembly  
of Ontario**

First Session, 36th Parliament

**Assemblée législative  
de l'Ontario**

Première session, 36<sup>e</sup> législature

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(Hansard)**

**Wednesday 18 June 1997**

**Journal  
des débats  
(Hansard)**

**Mercredi 18 juin 1997**

**Standing committee on  
resources development**

**Comité permanent du  
développement des ressources**

**Workers' Compensation  
Reform Act, 1996**

**Loi de 1996 portant réforme  
de la Loi sur les accidents du travail**



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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
RESOURCES DEVELOPMENT

Wednesday 18 June 1997

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU  
DÉVELOPPEMENT DES RESSOURCES

Mercredi 18 juin 1997

*The committee met at 1528 in room 151.*WORKERS' COMPENSATION  
REFORM ACT, 1996LOI DE 1996  
PORTANT RÉFORME DE LA LOI  
SUR LES ACCIDENTS DU TRAVAIL

Consideration of Bill 99, An Act to secure the financial stability of the compensation system for injured workers, to promote the prevention of injury and disease in Ontario workplaces and to revise the Workers' Compensation Act and make related amendments to other Acts / Projet de loi 99, Loi assurant la stabilité financière du régime d'indemnisation des travailleurs blessés, favorisant la prévention des lésions et des maladies dans les lieux de travail en Ontario et révisant la Loi sur les accidents du travail et apportant des modifications connexes à d'autres lois.

**The Chair (Mrs Brenda Elliott):** Good afternoon, everyone. We'll come to order. This is the second hearing of the standing committee on resources development considering Bill 99. I'd like to welcome all of you, members of the committee and those of you here in the gallery. We are also connected to two other rooms where guests have joined us to listen in to the hearings.

For those of you who are here today for the first time and are new to the committee hearing process, I would just like to take a moment to explain to you how this works. This is a standing committee of the Legislature. As such, we are governed in this committee by the same rules that apply to the House. Guests are welcome in the galleries, and we're very pleased to see the interest in this bill. But just as in the House itself, there are no demonstrations or applause permitted at any time. I would ask your cooperation in this regard, particularly in the committee process when presenters come forward to make presentations on this bill. I think it's very important that they're able to come forward and make their presentations without interference in the best atmosphere of courtesy that we can provide to all. I do ask your cooperation in this regard.

BOARD OF TRADE  
OF METROPOLITAN TORONTO

**The Chair:** We have this afternoon before us seven presentations from various organizations and we'll begin with the first presentation, representatives from the Board of Trade of Metropolitan Toronto. We welcome David Brady. Would you please introduce your colleague for the record. You have 20 minutes within which to make your presentation.

**Mr David Brady:** Thank you. I'm with Mr John Bech-Hansen. Mr Bech-Hansen is the assistant manager of policy at the board. I chair the board's labour law committee. We're very pleased to be here.

A little bit about the Metro board of trade: It is the largest community board of trade/chamber of commerce in the country. The membership is comprised of many types of business entities: many self-employed businesspersons, public sector, private sector, of course small, medium and large employers. There's a huge interest as far as the board is concerned in Bill 99.

To begin our submission, the necessity of reform: We have provided a written submission, which hopefully all of you have. I'll briefly go through that submission.

We support the government's initiatives to reform Ontario's workers' compensation system. Bill 99 recognizes the need to bring health back to an ailing system. The act over the years has been pushed and pulled by amendments, resulting in a system, in our view, that hasn't worked well, is not financially viable and does not serve workers and employers as it should, because, fundamentally, the existing system, amended over the years, by design is beyond the WCB to manage. The WCB has always been criticized by both employers and workers. The reason for that is it has a system, by law, that it is unable to manage because of the design. So Ontario does need a new act.

When the minister made the announcement in November of the new act, there were some significant focus changes. Prevention of workplace accidents has got to be number one. Following that, there has to be a significant effort to return injured workers to work, where that effort is one that comes with positive duties to cooperate in the workplace for that to happen. Lastly, if a worker is unable to return to work because of a workplace injury, compensation ought to flow.

Brief comments about the safety aspect, the front-end engine, middle section and last section in the train: The concept of an accreditation system is wonderful. It should be something that is based on a rigorous health and safety audit and it should be placed on the fact of an excellent safety record in terms of severity and frequency of accidents. If there is an accreditation, employers ought to be recognized in that effort, and that effort isn't alone. Trade unions would be part of that and obviously workers would be part of that. There ought to be a reduced role for government and this would be, I suppose, reflected in the Occupational Health and Safety Act. There ought to be some significant financial rewards which would attend the excellent health and safety record of that particular employer.



Coming to the return to work, we think the return to work is the jewel in the new bill because it addresses the ills of the existing system. I'm going to spend a little time in our 20 minutes to focus the most attention here. In our view, the existing system is not benign; it is destructive. The existing workers' compensation rehab model presents barriers to reinstatement and re-employment of injured workers and tends to make employers and workers adversaries instead of allies in getting injured people back to work.

We think there are five ills, barriers, that Bill 99 seeks to address.

The first is insufficient information about the injured worker's functional abilities. Right now the injured worker, the employer and the health care providers often do not communicate with each other directly, and if they do communicate indirectly, they usually operate on misinformation.

The second ill is that the medical information is often too little, too late. If there's not an early intervention in terms of someone returning to work, the longer they're out there the less chance that they will ever return to work. It does a disservice to the health of those injured workers.

The third thing is the workplace parties — and in the definition of Bill 99 that means the employer and the worker; we'll have something to say about that in a second — right now do not have to work together for an early and safe return to work. Workers drift and some employers allow workers to drift, and that ought to be stopped.

The fourth thing is that health care providers are often put in a position of being advocates. They ought to be knowledgeable facilitators. They ought to be the link between the injured worker and the employer, and that link has got to be healthy and vibrant to have a real potential for a return to work.

The fifth thing is that the WCB right now by statutory mandate allows the workplace parties to deflect return to work, duck the task, and takes the task on itself. When the WCB does it, then you have to ask, how is it doing? The answer is, it's doing very poorly. The existing system is well intentioned but it doesn't work because in section 53 of the existing act the WCB has a discretion, after 45 days, as to whether it's going to get involved with voc rehab or not, and only after six months is it mandatorily required to get involved. That is far too late. It is slow, unfocused. It's reactive. It has a terrible track record. It all operates at huge expense and, though well intentioned, as I mentioned earlier, in our view it doesn't work.

So what does Bill 99 do? It says to workers and employers, in section 40, "You have to cooperate with each other." That's wonderful. Cooperate: (1) No drift. Workers have to keep in contact with employers; employers have to keep in contact with workers. (2) They have to work together to identify and arrange suitable work. Who better to do that? No one better. That is joined with good information at the front end, which is functional abilities information, as a result of a filing of a claim where there is consent for that information to be

provided to those workplace parties, and a duty on the health care providers to provide the information.

There are penalties that go along with the lack of cooperation and there's a quick response time in the WCB. If you don't think your opposite party's cooperating, the flag goes up, the WCB's in there, you mediate. If that doesn't work in 60 days, you're going to get a decision. That is superb. It's fast, it's proactive and will get the job done.

Section 40 is the new section, as you are aware. Section 41 is just what section 54 used to be, and that's the positive obligation to re-employ and reinstate. Now we've got two things operating together. Section 40 allows the job to get done. Section 41 identifies clearly what job it is that has to be done. Penalties go for the lack of cooperation along the way. From an employer's perspective, the penalties which would be provided under both sections 40 and 41 have in addition to them the NEER experience rating penalty that if someone is not returned to work and is therefore someone who has reserves for that claim as a cost base identified in the NEER statement, that has a dramatic effect on rebates and surcharges, and that's appropriate.

In our view, the new system is built on employer and worker rights and obligations. Where you have a right, we see that there is a responsibility. It is designed to operate quickly and it's designed to be based on objective medical information. So we applaud the return-to-work provisions, sections 40 and 41 together.

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We ask a question, however. Thus far, the workplace parties have been worker and employer, and we say, who best? But that isn't the workplace party cadre. Those who are members of bargaining units and members of trade unions often, and rightfully so, work together with their bargaining agents in sorting out their rights and obligations in returning to work. Why isn't the trade union a workplace party that is recognized in the sections? And why isn't there a positive obligation on the part of the bargaining agent to act reasonably — no more, no less — act reasonably. Right now there's one section, subsection 47(14) that talks about seniority, and the bottom line is, this subsection does not operate to change the seniority provisions of a collective agreement. In our view, that doesn't tell us anything.

It suggests, though, that seniority might be raised as an absolute barrier for those who are not members of a particular bargaining unit to enter into that bargaining unit, where suitable work may be found. That's not to say that those bargaining unit members ought not to have any seniority rights against the foreigner outsider. What it does say, in our view, is that there has to be a balancing of interests by the bargaining agent. In other words, no doctrinaire, no absolute, no seniority as a barrier, but a reasonable approach and a balancing of interests as between members of the bargaining unit and where jobs may reside for those people who are outside and in the employ of that employer and they can do the work because they've got the functional abilities to do so. We would ask that that be considered.

We have, in our submission, given you an excerpt from the Renaud case. It comes out of the human rights

Supreme Court of Canada case law and it very simply says to you that trade unions have a duty to be reasonable when it comes to accommodation. Why can't that fact and that law, which is beyond debate, be reflected in the realm of workers' compensation in Bill 99?

Last couple of points: Bill 99 does make a lot of changes in terms of compensation, and that is certainly an area of large debate and where I think the interests of many of the people in the room lie. The financial viability of the system and its health are significantly important.

In our view, the various things that have been introduced in the bill are appropriate in terms of a new benefit level. The benefit level compares favourably across Canada. It does take into account the income tax aspects of receipt of benefits under the act. The inflation formula is adjusted but it is adjusted in a way that is consistent with the adjustment of the previous government.

In terms of stress and chronic pain, one of the major things at issue here is objective fact and causality. We certainly are endorsing chronic pain and certain aspects of stress to be compensated. We think that those demarcations in the bill are appropriate.

We think that compensation ought to be based on fact and not formula, and what we mean there is the formula in Bill 99 is 85% of the net average earnings as between what the worker was earning and what the worker would be capable of earning on a re-entry to the labour force.

A last thing to say to you about claims and adjudication: It is nice to see in Bill 99 some reference to mediation, both at the board level and at the tribunal level. That ought to be a dispute resolution mechanism that is used as much as possible.

Beyond endorsing that concept and recognizing that it has limits, the thing that is of primary contention I think in this WCAT jurisdiction is subsection 117(2), and that's where the new bill says that the tribunal will be bound by board policy.

We think that's appropriate in principle, because the board has the responsibility — it comes back to rights and responsibilities — of managing the system. The tribunal has no such responsibility, and all of you can appreciate that if you have a management responsibility and there's an absentee manager out there that's telling you how things ought to go, it really makes the management of the system very, very difficult.

In principle it's fine, but we wonder about the practicality of the current expression "board policy." We don't really know what it means. It can mean various things: board minutes; what's contained in policy binders, which are sometimes up to date and sometimes not; what happens if there is quite a distinction in terms of the interpretation and application of a particular board policy. We think there is a lot of room for litigation there that it's not the intention of Bill 99 to stimulate. So we would suggest a definition of "board policy" in order for the workplace parties, which we hope would include trade unions, employers and workers, to better know, going in, what the jurisdiction of the tribunal is respecting "board policy."

In conclusion, we're satisfied on the facts that workers' compensation reform is absolutely necessary for the

financial health of the system. We're satisfied that compensation under Bill 99 is one that does reflect the various kinds of entitlements that ought to be allowed under the act and compares favourably across Canada. The emphasis on accident prevention is superb and the return-to-work provisions are not only correct but they are fundamental to the management of the system, a system which is well designed and that really works for workers and employers.

I don't know how much of the 20 minutes we have eaten up, but if there are some questions, we'll do our best to answer them.

**The Chair:** In point of fact, there are two minutes remaining for questions and, as agreed in the subcommittee, when the time for questioning is short, I shall keep a separate roster and it will go to one caucus only. So in this particular case, the questioning will go only to the Liberal caucus, and we'll have a separate round in other circumstances.

**Mr Richard Patten (Ottawa Centre):** I've got a very short time. I have two questions for you. One is, have you had a chance to see the form that was put out on Monday? This is the functional form.

**Mr Brady:** No, I haven't. My concept is that it's perhaps one or two pages and it's for medical practitioners to either fill in the blanks or indicate, as simply as possible, what the functional abilities are, but I have not seen it.

**Mr Patten:** Okay, perhaps we can get a copy of that form and you might have some comment on that after the hearing. I'm running short of time. I did want to ask another question. There are many concerns, by the way, around the sharing of medical information going directly to employers and the worry that that might be, in some instances, not in the interest of the workers. So I'll just leave that one with you.

The last one: I'm pleased to see that you identify something that has been identified by the injured workers union and the council of employers for compensation, and that is the relationship between WCAT and the board. In the definition of "policy" I agree with you, it's not clear. Our worry is that the independence of WCAT could be compromised if indeed they are seen to be overridden every time by what they do. There has to be a very clear definition of the role. Some people are saying that this has in fact undercut the capacity of WCAT to really perform its duty, in all fairness to workers and even in some cases, obviously, to employers. So that's a big concern.

The minister said that she was prepared to entertain suggestions. There are a couple of suggestions that did come forward on the first day and they sound interesting. I wonder if you have any further comment on that.

**Mr Brady:** No, I think the lack of definition is problematic. I think the theory, as we have said, is appropriate in terms of rights and responsibilities and absentee management, but for example, the policies that might have to do with hearing loss or with mesothelioma and various kinds of occupational disease, right now, the policies are reasonably but not wonderfully well defined. I would take it that those kinds of policies, when they would go to the tribunal, ought to be honoured by the tribunal.



There are a lot of subjects that are not perhaps as clear cut. Employers are very concerned about assessment policies, because they are scarce, they are not very fulsome and they allow a very large discretion in the board. On the assessment side, if the board were to certify a policy, but the policy doesn't cover the ground, I would think the tribunal would assume jurisdiction. I think the same thing would happen on the claims side.

On the face of Bill 99, it appears that the WCAT is narrower and perhaps compromised. But when you get into board policy and what it is and what it says and how it's interpreted, and if there's a difference in the view of the interpretation, WCAT will take that jurisdiction. The present bill doesn't say that can't happen. I think a lot of latitude is still there for the tribunal, even on the existing language.

**Mr Patten:** I hope that's not just a generous interpretation.

**The Chair:** That concludes the presentation time. Gentlemen, we appreciate you taking the time to come before the committee.

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#### ADVOCACY RESOURCE CENTRE FOR THE HANDICAPPED

**The Chair:** Our next presenters are Mr Baker and Ms Kaspersma from the legal resource centre for persons with disabilities, ARCH. Welcome. We appreciate you coming before us today.

**Mr David Baker:** Let me introduce Nancy Kaspersma, who is an injured worker and a client of ARCH. We appear today as her legal counsel. She's taken her holiday time to come into Toronto to present to you. She'll be speaking first.

**Ms Nancy Kaspersma:** I have work-related injuries. Because of them, I lost my job for two and a half years. After much fighting to get my job back, my union got it back for me through negotiations of the 1995 contract. When I returned to work, it was to find a poisonous environment by my fellow co-workers and management against me because I was a disabled worker.

Every day I was harassed one way or another. Tools and parts to do my job would go missing, to be found somewhere else in the department. The one job I did was off-line. The worker on the other shift would leave the job not completed. This resulted in me having to do their work, my own work, plus making sure the job was caught up for the worker on the next shift. Because of this I ended up doing more physical work than my WCB restrictions allowed.

I endured verbal abuse and threats from my fellow co-workers on a continual basis. My team leader changed my WCB rotation to make me do the more physical job four out of five days instead of every other day as set up by my WCB case worker. When I questioned him on this, he told me he had the authority to do this and nobody could stop him. Management knew all this was happening and turned their back to me.

Because of the harassment I became very sick and had to go off work. A WCB worker told me the only stress that was covered by WCB was instant stress. The worker told me that an example of this was if I was a police

person and I saw my partner get shot. Another example given to me was that if another worker had hit me, that was instant stress. In these two cases, stress of this nature is covered by the WCB act. Going through a living nightmare for six months on a continual basis was not covered by WCB because it wasn't instant stress.

The company I worked for has done a full investigation into my former harassment complaint. The employee relations worker from the company who handled my case has acknowledged that I was harassed by fellow co-workers and management. He apologized on behalf of the company for failing to provide me with a harassment-free environment.

**Mr Baker:** Ms Kaspersma is here because the circumstances of her case are currently in dispute before the WCAT. They rely on the current board policy of excluding compensation for mental stress. The issue is specifically addressed in section 12(4), which would exclude it permanently from compensation. I'd like to indicate that there are some considerations that I think the government should take into account when making a specific exclusion of this kind.

The Supreme Court of Canada has indicated:

"Mental illness is one of the least understood and least accepted of all illnesses. It creates fear and stereotypical responses in people. Yet who are the mentally ill? Potentially they can be people who suffer from varying degrees of illness, from short-term situations that temporarily incapacitate an individual to long-term illnesses that require continuous support and attention. Psychiatric disabilities have many possible causes, sometimes physical, sometimes psychological and sometimes social. For a great many people, such illnesses are shameful and embarrassing and as a result they are very reticent to stand up for their rights or to protest when injustice has been done to them."

The Supreme Court in that case went on to strike down as a violation of equality rights a provision in a long-term-disability policy that specifically excluded mental illness. The case was *Gibbs and Battlefords*. It's referred to in the material we have provided to you. The case was one in which my office was involved and it came down at the end of October. Therefore it may not have been known to the legal advisers to the government when they chose to put this exclusion into the statute. I would point out, though, that the charter is the supreme law, the charter would apply the same principles, and that there will be a charter challenge to this exclusion if the government proceeds with it.

I'd like to conclude by pointing out that we're not asking you to address this strictly on a legal basis, although I hope the government will go back to its legal advisers and seek an opinion as to whether the point we are making, as to its constitutionality, is a valid one. But the reasoning behind the Supreme Court's decision I would urge on you as well.

It's not just the legal work that needs a second look, but the kind of motivation the court looked to in that case for saying: "Why single out the mentally ill? Why say that this group will not be compensated when they have the same disability, the same incapacity to work, as anyone else as a result of a work-related injury? Why are

we doing that?" That's the question the court asked itself. They said, "The reason is that this group is vulnerable because the public does not understand mental illness well, because people do not assert their rights in these circumstances." That is the reason the court found in the Gibbs case that it was discriminatory to exclude protection for people with mental illnesses.

I would say to you, the courts will find precisely the same thing about this legislation if it is to proceed for third reading. We respectfully request that the government look at this decision and look at the thought and the reasoning that underlies this decision. Ask yourself whether you don't know people who have a mental illness, who could have become ill as a result of workplace stress, and ask, why single out this one disability for treatment in this way?

**The Chair:** We have five minutes for each caucus for questioning. We'll begin with the official opposition.

**Mr Patten:** I appreciate that information. It's helpful and useful because occupational stress is expressly excluded. The advice we've been receiving is that this surely will lead to further legal costs, legal challenges for both employees and employers in this particular case. Not only that, but someone who may obviously have a particular injury, be it mental or physical, if they are deemed to be uncooperative because they don't want to return back at a time at which they feel they're unable to, loses benefits as well. It then transfers any support system out of the realm of the board to welfare or some other kind of system. It's an area that obviously needs to be addressed.

In your experience in a legal area — and you've said yourself that there will be a court challenge if it does not take place. Notwithstanding that, is that your view as well, that this would lead to continued litigation outside of the confines of the board?

**Mr Baker:** The Supreme Court of Canada said very clearly, in the context of long-term-disability insurance, which is the private equivalent of workers' compensation, that it is discriminatory. It is only going to be a higher obligation under the charter and imposed on the government than what the Supreme Court of Canada was prepared to impose on private employers and private insurers. I cannot conceive how, in light of this decision, the government could proceed.

**Mr Patten:** The other question I have is with the introduction of a time limit of six months. As you know, especially in terms of mental stress which would occur over accumulated periods of time or incidences that may occur, the definition of the date of injury is difficult perhaps to pin down. On the other hand, the malady may be — and let's assume it is — real. This makes it very difficult for that particular individual when in fact that time line may have passed and they may have lost any entitlements at all.

**Mr Baker:** Again, the courts have struck down limitation periods in circumstances where people, because of their mental disability, were unable to assert or to protect their rights and that limitation period would not stand up. I can't resist saying that for generations there has not been a limitation period; that has been a very significant part of workers' compensation. It's a sad day that it's threatened.

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**Mr Patten:** Could you provide the committee with the legal reference points related to time limitations?

**Mr Baker:** Of course. Certainly.

**Mr Patten:** I pass to my colleague from Hamilton East.

**The Chair:** Very, very brief, please.

**Mr Dominic Agostino (Hamilton East):** Thank you, David, for your presentation.

The question I guess is "discriminatory" in general, but I'd like to get your reaction to this. When it comes to the issue of mental stress or mental illness as a result of stress on the work site, what about discriminating more against women from the point of view of potential mental stress as a result of sexual harassment on the job, the fallout and the impact of that and having to endure that and as a result dealing with further difficulties? Do you see a real vulnerability there, if this is allowed to stand, for women who would be victims of sexual harassment on the job site and then would obviously deal with the fallout from that from the point of view of mental stress, and that possibly what should be a compensated item would not be? Is that a real concern?

**Mr Baker:** I understand the issue was raised on Monday, and certainly it would be a matter of concern. The kinds of issues that contribute to workplace stress are of general concern and need to be looked at. I would say though that it has up until now been a very high standard. I understand fewer than 10 cases have been accepted over the years, so that it's not something where we're talking about a huge number of cases, because you have to establish the social basis for the mental stress. It's not something that can be psychologically or genetically based.

None the less, in the cases where it is real — and Ms Kaspersma's case is clearly acknowledged to be one of those situations. The employer even acknowledges that it should have done something and apologized to Ms Kaspersma for what occurred, where she brought to their attention the harassment and nothing was done and nothing was done and nothing was done. You reach the point where you're holding on to your job and the only outlet you have is that you snap, and there's no other way of looking at it. In those circumstances, clearly people should be entitled to compensation.

**Mr David Christopherson (Hamilton Centre):** Thank you very much for your presentation, Dave. Yesterday we heard from L.A. Liversidge and Associates, with whom you may be familiar; I'm sure a lot of other people are. He made a presentation on behalf of his company speaking in favour of Bill 99 and thought that the sun rose and set on Bill 99 — my words.

When we talk about stress, in his presentation — I want to raise two things with you in terms of comp and get your response. One is, and I'll read directly from their presentation, because this is their argument against including any kind of recognition for stress:

"The principal concern of employers with respect to stress claims has been with the multi-factorial cause of stress, the difficulty in assessing employment-related stressors and the inability of the medical profession to determine if employment contributed to the cause of the stress. In short, the concern has been the test for entitle-



ment and not whether or not stress which could be definitively related to the workplace should be compensated."

How would you respond to that employer perspective?

**Mr Baker:** Those are the kinds of arguments that were raised by the employer insurer in the Gibbs case. They're saying this poses evidentiary problems, but the Supreme Court was not prepared to accept that, and I would submit that compared to the evidentiary problems in many other cases of industrial illness, and accident for that matter, the evidentiary problems are minuscule. The basic point is that these cases have been heard and it's not as if a tidal wave has passed over us all. There have been fewer than 10 cases in eight years. One would not expect that necessarily to change, and if it did change, I would submit it's because there are serious problems in the workplace for which employers should not be escaping liability.

**Mr Christopherson:** I would also, pointing to the same presentation, read this, because this really struck me, and I want to get your thoughts on it. The report says:

"Bill 99 removes the board's jurisdiction to consider claims for 'chronic occupational stress.' There is an inherent pitfall in the complete removal of chronic occupational stress claims from legislation which may open the doors for courtroom action against employers. It would be preferable to set out in very rigid and strict language what the entitlement criteria are, ensuring only that those very rare cases will be deemed compensable."

When I saw that, we'd picked up through the rumour mill that there were a couple of areas of concern that employers have had, and the minister has indicated she's listening to them. She's not listening to injured workers but she's listening to employers raise their concerns. When I read this and heard the comment Monday, my thought was, what they're worried about here is that complete removal, to put it in layperson's language, by completely removing it out of Bill 99, it leaves open the opportunity for courtroom action, since it hasn't been ruled outside the court's jurisdiction by being in Bill 99. Therefore what they want to do is make it absolutely airtight so that only a very few cases can get through, but ensure that no employees or employee representatives can actually take companies to court. What is your opinion of what they've said and my interpretation of what the game plan is here?

**Mr Baker:** If injuries are not compensable under this legislation, then the issues will return to the courts at great expense to everybody, including employers. The point they're making is they would like to have something which continues to discriminate but perhaps leaves open a slightly greater opportunity for compensation so as to foreclose those tort actions or at least to delay them until they've gone through an adjudicative procedure, and then you're left to face a whole new one from the starting point.

My submission would be that 12(1) defines the circumstances under which a disability is compensable in the legislation. If it discriminates against people on the basis of their type of disability, it will run afoul of the law. It should simply be a matter of repealing (4) and conse-

quentially (5) of section 12. That is what the courts would require.

**Mrs Margaret Marland (Mississauga South):** Mr Baker, you and I have done quite successful work in the past on behalf of injured workers in this province. My first question is, I notice that you've said this is before WCAT, so is it appropriate for this case to be a focal point of the hearing today?

**Mr Baker:** We feel the facts speak for themselves. The legal issues and the specific facts have not been disclosed beyond what is common ground between all parties. That is, the Workers' Compensation Board has consented to the issue going to the WCAT because it is contrary to board policy; it is a case of mental stress. On that basis and subject to the limitations set out in the material, we're prepared to discuss it.

**Mrs Marland:** Well, I'm a little nervous because WCAT is a quasi-judicial body. As a government member, I don't feel I can discuss this particular case that you bring to us as an example because I wouldn't want to jeopardize that case on either side.

**Mr Baker:** I appreciate your concern, Mrs Marland.

**Mrs Marland:** Okay. What I want to ask you is, thinking back on some of the issues and situations that we have dealt with in the past, and looking at what the subject is that's before us today in this bill, how far do you think — you have been describing a unionized workplace. If not in this case, which I don't want to discuss, if we have a unionized workplace in a private industry or corporation or business, how far do you think government should go to control that private business, commercial entity or corporation or workplace? Do you see that the long arm of government should go in and say to the private sector, "You're not protecting your employees" in terms of any kind of harassment? I think the question from my Liberal colleagues about other forms of harassment was an important one. What do you see as the role of government in terms of controlling that private employer?

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**Mr Baker:** I think the principles in the Gibbs case again apply. That is, if the government offers, as a substitute for tort litigation, workers' compensation legislation that is there to compensate people for injuries arising out of and in the course of their employment, as is clearly the case in many cases of mental stress, the intrusion should go no further than is necessary to compensate those people for their injuries that were caused by their employment. That's the tradeoff that went back to 1917 when workers' compensation was introduced. It's the tradeoff, if you like, that will carry forward with Bill 99 in whatever form it is ultimately passed.

The question I raise is, why this specific exclusion? Is it not discriminatory to single out the mentally ill and say, "You can't be compensated even though you qualify in every other way for workers' compensation"? What justification is there for that? I don't believe it's an intrusion into management's prerogatives.

**The Chair:** That concludes our time for questioning. On behalf of the members of the committee, I thank you for taking the time to come and share your views and concerns today.

## TORONTO-CENTRAL ONTARIO BUILDING AND CONSTRUCTION TRADES COUNCIL

**The Chair:** I now call upon representatives from the Toronto-Central Ontario Building and Construction Trades Council, I believe represented by Mr Cartwright. Welcome. Before you begin, please introduce yourselves for Hansard.

**Mr John Cartwright:** My name is John Cartwright. I'm the business manager of the Toronto-Central Ontario Building and Construction Trades Council. With me are Mike Grimaldi and Tracy Lowe, who work with the building trades WCB services. That's a project of ours that deals with the hundreds of injured workers in construction that we see every year. I'm going to go through the brief and read it.

Since its enactment in 1914, the mandate of the Workers' Compensation Act was to provide fair compensation for injured workers for the length of time their injury existed, in exchange for not suing their employers. The union movement has never viewed this as being an equitable tradeoff by itself. Over the years, we have tried to ensure that the broader agenda of safety and health was addressed, with compensation provided when necessary. Making health and safety part of the agenda requires that there is a balance between workers and employers in the workplace.

What we've seen in the last two years is that this government has rolled back the gains made by workers, in the name of cutting red tape and allowing for business flexibility. The effect has been to remove the requirements of employers to invest in health and safety, and it is workers who will pay the price.

The priority shift is also being carried out with the operation of the WCB itself in a "financially responsible" manner. The termination of the Workplace Health and Safety Agency, limiting funding for the Workers' Health and Safety Centre, decreased compulsory training for health and safety committees, eliminating the Occupational Disease Panel and moving to what's called self-reliance and self-compliance between employers and workers disrupts the balance and points to the fact that long-term health and safety is clearly not a priority for this government.

We have lost the opportunity to have equal representation with employers on the board that is to govern and ensure health and safety at work. The board, dominated by employers and insurance representatives, will ensure that their interests and investments are protected while ignoring the concerns of workplace hazards, which require financial commitment.

Under the present act a claim can be established for an injured worker by a doctor or employer, but under Bill 99 workers must obtain a form and initiate the claim. Currently, a claim can be started by a doctor upon a visit to any emergency room. Under Bill 99, a worker must get an application form from the employer or try to obtain one from another source. Where and how workers on construction sites in remote locations can obtain these forms is unclear.

The financial reward for reducing the number of claims has already motivated many employers, particularly in

our industry, to intimidate workers into not filing a claim. The construction industry is characterized by the fact that there is no seniority protection, the industry is in constant flux and the work is unsecured as there is no protection from layoffs, and this combines to create an environment ripe for coercion. Under Bill 99, this government expects injured workers to ask their employers to file claims for compensation. Anyone who understands the construction industry knows this is a recipe for non-compliance.

Particularly in housing, where many of the workers do not have English as a first language, the intimidation factor will be severe. Faced with these barriers, many workers will not file a claim. Placing the onus on workers to approach their employers makes a mockery of the concept of coverage, and there will be unscrupulous employers who will profit even more than they do today.

There is already overwhelming evidence of employer evasion of their financial obligations, such as employers operating under numbered companies with several names; companies which open and close to escape soaring assessment costs because of poor safety practices; hiring compensation consultants to vigorously reduce their costs; and faking modified return-to-work programs only to receive rebates through the rating system. Obtaining claim forms through the employer will only exacerbate this problem.

I want to talk about one other area that's unique to our industry where major employers in this province are escaping their obligations to pay, and that is around so-called independent contractors. We have huge employers in the construction industry, some who have 300, 400, 500 people working for them, all of whom are independent contractors. As those people get hurt, particularly in the housing industry, the rating experience of the main employer is never touched and they never pay for the fact that they don't have a proper health and safety program or plan, they never pay for the true cost of compensation, because it's all set up to be claimed through so-called independent contractors. The Ontario Labour Relations Board has dealt with the issues of independent and dependent contractors and the Workers' Compensation Act should do the same.

There are tens of thousands of construction workers in this province, yet Bill 99 discriminates against this very large portion of the working population. Construction is fundamentally different from other industry sectors. The work is prone to cyclical fluctuations and requires that construction workers move with the work site. Thus, under Bill 99, when determining average earnings, construction workers will be penalized because of the variations in their employment. Getting injured while on a construction site could mean absolute poverty if the worker did not work for 52 complete weeks out of the year because of a rainy spring or economic slowdown. This is particularly true today, when we are just getting out of the worst recession since the 1930s. But the future work picture for a tradesperson is much more favourable, largely due to the low interest rates. On the one hand, workers' earnings can be reduced because they were sick for part of the year or there was a slowdown in construction. On the other hand, with the bill, if a worker has a particularly good year their earnings would be capped.



One result of Bill 99 that does not escape notice will be the downloading of compensation costs on to municipal tax rolls. Not only do workers suffer, but the community as a whole will also suffer as some of the injured workers, who will not get adequate benefits, turn to municipal social assistance programs. Others of the 103,903 workers who last year lost wages because of a workplace accident will be afraid to report that and their medical costs will be borne by OHIP. The employers' responsibility is offloaded to taxpayers while employers' profits increase.

Currently, workers are entitled to benefits which equal 90% of their net average earnings during a period of partial temporary disability. Under this proposed legislation, workers will be entitled to only 85% of their pre-accident earnings minus whatever the board deems them to be capable of earning after their injury. Essentially, what this piece of legislation is doing is reducing compensation benefits to far below 85% of their net average earnings.

With respect to return-to-work plans, Bill 99 is unclear as to what criteria will be used to determine adequate return-to-work plans in our industry. As you are probably not aware, construction is physically demanding and strenuous work. If this legislation applied to construction there would be few jobs available on a site that could accommodate repetitive strain or back injury. In construction, a return-to-work plan means counting tiles in a tool shed. Construction workers have once again been discriminated against with this piece of legislation.

1620

Construction workers perform a unique job by using their bodies as the main tool of their trade. The board recognized this and created a special unit to deal solely with construction adjudication and vocational rehabilitation issues. We were part of training decision-makers at the board about the nature of construction. We strongly oppose the outsourcing of labour market re-entry plans to agencies outside the board.

Under Bill 99, if a worker disagrees with the board's plan for their medical rehabilitation or labour market re-entry plan, they may be deemed as being uncooperative and their benefits terminated. Worker rights are limited by the fact that they are forced into cooperating with whatever decision their employer and the board determine is appropriate to return to their work.

Worker rights are further limited with constraints to WCAT appeals. We strongly condemn making WCAT a subservient arm of the Workplace Safety and Insurance Board instead of having its decisions rendered on the basis of law.

In summary, we reject the entire direction of Bill 99 and the government-related actions that erode workers' rights in this field. If the only issue driving this agenda were fiscal responsibility, the bad debts of \$173 million that employers owed from 1994 would be collected and the employer rebates, that had exceeded \$359 million for one year, would be terminated. More important, the process of education and empowerment of workers that was developed through the bipartite Workplace Health and Safety Agency would be strengthened rather than eroded. The proven record of reduction of accidents and

health hazards translates directly to the total cost of compensating victims. There have been, until recently, fewer victims.

But the government has turned its back on that approach and is intent on depriving workers of both their right to a healthy workplace and adequate compensation in the event of sickness or accident. It may be able, in a few years, to point to better statistics as employers exercise their power to ensure that fewer lost-time injuries are reported. But the real impact will not be hidden for those of us in the workplace, as the increase in construction deaths last year will attest. Employers can hide lost-time injuries; they can't hide it when somebody is killed. We'll tell you right now that the reduction in the last period of time is due to employer coercion of people not reporting injuries, and it will get far worse under Bill 99.

Clearly, to us the reform processes in Bill 99 are solely about reducing the costs of dealing with the real victims of workplace accidents and the workplace process in Ontario. This is unacceptable in the face of the human suffering that far too many of our members experience. Thank you for listening to our presentation.

**The Chair:** Thank you very much. There will be three minutes per caucus for questioning.

**Ms Shelley Martel (Sudbury East):** Thank you for appearing today. I want to ask you to reinforce, if you can, some of your concerns around coercion of employees. I'm not sure how many members you represent. I suspect a lot of them would be in remote areas. I don't know where they're going to get a form; I don't know how many of them would be well aware of their rights. Please talk to the committee again about why you're so concerned that if a worker has to initiate his claim, he's not going to because he's going to be too worried about being intimidated.

**Mr Cartwright:** I think that's a really important element of what we're here for. People need to understand that in construction there is no such thing as seniority. A job site comes, it's built and it's finished, and people are expected to go on to the next job, but they don't necessarily go on to the next job. The ability of an employer to say, "Gee, you are a good tradesperson but I don't have work for you tomorrow; you're gone, and here's your slip," is an everyday reality of our existence.

Even during the boom time, we had employers right here in the city of Toronto, major employers, who were telling employees, "If you want to have a good long-term relationship with this company — you've been hurt and you'll be off for a week, but we'll keep you on the payroll and you do not claim with the Workers' Compensation Board." That's during the boom times. People did that because they were afraid of being laid off. In the recession in the last number of years, people have been terrified.

When it is strictly up to the employer to have the process vetted through them, more and more workers will not put in any claim. And that's when workers are unionized. In certain parts of construction, the housing sector particularly, a significant number of non-union workers have no rights, no specialists like Tracy or Mike to back them up when they've had obvious injustices

done to them. Those people will keep their mouths shut. But the injuries will be there and the injuries will continue to bother those people, and then some years down the road, when they're not able to make a living, they'll be on social assistance, with the taxpayer paying, not the employer.

**Mr Ted Arnott (Wellington):** Thank you very much for your presentation. I certainly appreciated hearing your views. At the start of your presentation, on the first page, you were critical of some of the steps the government has taken recently with regard to health and safety issues. I wanted to ask you if you're aware that the government has hired 20 new health and safety inspectors in the last year and intends to hire an additional 26 this fall.

**Mr Cartwright:** I'm aware that they've hired more people. They've laid off the staff who support those people.

**Mr Arnott:** I'm not quite finished. There is quite a list here of additional things that have been done. The Ministry of Labour performed 39% more health and safety inspections of workplaces than were done in 1994-95; and over the same time period increased field visits, which include both inspections and consultations, by 21%; and 31% more orders were issued to correct health and safety violations. The Ministry of Labour issued more than 22,000 orders between January 1, 1997, and May 31, 1997. The government played a pivotal role in the creation of the Safe Communities Foundation, a community-driven initiative to create safe and healthy workplaces in communities. The government committed \$415,000 to the youth awareness program, which educates students about occupational health and safety prior to their entering the workplace. And of course the government has begun a comprehensive review of the Occupational Health and Safety Act to ensure it meets the needs of modern workplaces.

Wouldn't you agree that all of these initiatives, taken together, will dramatically increase safety in our workplaces in Ontario?

**Mr Cartwright:** No, quite the contrary. Most of those things, if you actually understand the workplace, are essentially smoke and mirrors. Hiring more inspectors has been done at the demand of the union movement, but they've taken away the ability of those inspectors to actually enforce the act by removing the laboratories, by removing the legal backup for those inspectors. We know quite a number of inspectors ourselves, and they are telling us that they've basically had their hands tied behind their backs.

The Safe Communities Foundation has absolutely nothing to do with the labour side; it's totally an employer-set-up situation.

We noticed a massive shift as soon as the government changed. Employers who at that point in time were cooperating with us in developing health and safety programs on the job site suddenly turned to us and said, "We don't have to deal with you any more, because it's our government in place, and we don't think we have to meet any more than every three months on a site." There has been a clear signal to the employer community that they no longer have to work truly as partners. They can

now work as paternalistic employers, that if they like something, they'll agree with it, and if they don't like something, it won't happen.

We're robbing ourselves of the skills the actual people in the workplace have to apply to health and safety, because the workers are not being brought into the process in a way that their skills can actually have an impact any more. It's totally at the whim of the employer. As I've said before, unfortunately in our industry we have many employers who are more interested in reducing their compensation costs than they are in actually spending money towards dealing with the health and safety agenda, in putting the time into having proper committees onsite, in allowing the joint health and safety representatives the training that's necessary and then using that skill, not in a consultative process but in a decision-making process, to ensure the workplace is safer.

That's what we saw happening over the last five or six years beforehand. Employers had come to understand that they had to work with our skilled tradespeople and use the benefit of our knowledge, and workplaces were getting safer. We're seeing now that all that is off and it's back to a very paternalistic point of view, that the employer will decide everything.

**Mr Agostino:** Thank you, Mr Cartwright. I appreciate the unique perspective you've brought on the impact this has on construction workers, particularly the aspect of intimidation in the housing industry, where there often isn't the sort of protection you would have in other trades, particularly that people don't speak English as a first language. I have many constituents who are in construction and whose first language is Italian or Portuguese. We already see the horror stories under the current legislation. The real concern you outlined here is that it's going to be even greater, not only the intimidation factor, because you now have to go through a process of going through the employer to file a claim, but also the language barrier.

What do you see as the result and the fallout from this? The option of some of these folks is going to be, "Either you lose your job or you keep working with an injury, or you cut some other kind of deal that's going to be detrimental to you." What do you see as the fallout for these folks? What can we expect down the line if these types of scenarios unravel as you and we believe they will?

**Mr Cartwright:** What we see essentially is that the concept of a universal program of compensation for people who are injured or who suffer illness on the job is going to be taken apart and replaced with a program that will apply in some cases, where a union is strong enough or a particular group of workers has some strength, and will not apply in more and more workplaces in this province.

As I said, we'll see injuries and illnesses that will continue to be with somebody through the rest of their lives and will not be adequately dealt with, so at some point in time we'll have more and more people who are going to be thrown on the scrap heap of this society.

**Mr Patten:** I want to ask you about your concern — and I've heard this representation made before — about



the cyclical nature of income for a number of workers, that if they get injured and happen to have had a bad previous several months, they could be jeopardized in terms of compensation. Do you have a specific proposal on that in terms of averaging over a greater length of time or something of that nature?

**Mr Cartwright:** Our proposal is fairly simple. Our people are paid an hourly rate, and that should be the basis of entitlement for compensation.

**The Chair:** On behalf of the committee, I thank you for taking the time to come before us this afternoon. We appreciate your advice and your perspective.

There has been an agreement to, I guess we might say, have a change in audience. We'll have a brief two-minute recess.

*The committee recessed from 1632 to 1634.*

#### UNITED STEELWORKERS OF AMERICA, DISTRICT 6

**The Chair:** Our next presenters are from the United Steelworkers of America. The committee welcomes Mr Hynd and Ms Hutchison.

**Mr Harry Hynd:** Good afternoon. We have an introduction we want to make to the committee, and we have a brief we brought copies of that we hope the committee members will take time to read. It's very important to the Steelworkers and the people we represent.

It has often been said, by many knowledgeable people, that we as Ontarians could be proud of our achievements in the field of workers' compensation. Designed originally by Chief Justice Sir William Meredith here in Ontario, workers' compensation was held up at one time as an example of comprehensive coverage and progressive achievement.

The Workmen's Compensation Act of 1914 grew organically out of the very conditions of work which existed in Ontario from the mid-19th century to the First World War. Simply put, workplaces became sufficiently mechanized, used enough toxins and operated at speeds that were killing, injuring, maiming and poisoning large numbers of workers. Something had to be done. The solution, and it was a creative one, by Tory-connected Meredith was the Workmen's Compensation Act. The legislation was remarkably forward-looking.

In 1914, Ontario workers were being injured and killed at a rate that alarmed even employers. Testimony from the Royal Commission on Relations between Capital and Labour in the 19th century documented the carnage. Details about what was happening to children and, to a lesser extent, women prompted stiffer legislation and the first series of workplace inspectors.

It is important to note that a high proportion of workplace injuries were catastrophic and the design of the compensation system reflected that. When arms and hands were amputated at work or when bones were crushed on the job, in most cases employers refused to be accountable and avoided their responsibility. Knowledge about the impact of occupational disease was very rudimentary, though it is clear in the historical record that there were many new illnesses and diseases that grew out of exposure in the workplace.

The principles of the Meredith decision have stood through decades of Conservative rule in this province. These compensation principles survived two world wars, during which the war economy exacted a staggering toll on Ontario's workers in the factories, fields and mines that supplied the resources necessary to the war. To illustrate how the planned changes to the compensation act are a return to what workers in our mines, mills and factories used to endure, we have collected a few stories which we will read to you today.

The purpose of our once-respected compensation system was to protect the income of women and men whose lives were damaged. In far too many cases, their lives were ended by their work in brutal and horrible ways. This objective of protection meant that those who were responsible for employment and work methods were also financially responsible for the damage caused. This, it was thought, would motivate those responsible to try and prevent the damage.

Instead, the workers' compensation system puts profits, production and productivity ahead of health and safety. We, as Steelworkers, have for many years learned these lessons through the hundreds of widows in northern Ontario mining towns. For years their lives were shaped by a total failure of the compensation system. However, through the work of the Occupational Disease Panel there was hope for the survivors to have their claims recognized. Bill 99 eliminates the independent Occupational Disease Panel and in turn eliminates the hope for widows or the diseased workers.

In our written submission we touch briefly on a few key areas which we identify as priorities in the struggle against proposed changes to compensation as outlined in Bill 99. We discuss occupational disease, accommodation/return to work and the end of vocational rehabilitation, privatization of services, the narrow time window for appeals, and the changed confidentiality obligation for employers. This does not mean that other areas of the proposed legislation do not concern and anger us.

We will use strong language, the words of those who have been affected, because there is no longer any purpose in being polite in these matters. We are concerned about the uncompensated victims. They stand as grim warning of what can happen when government approaches compensation with a bottom-line attitude.

#### 1640

We had hoped to get away from that attitude, but Bill 99 shows us it will become a strong reality. The central theme of our presentation is one continuing message, simple and to the point: If those who benefit and profit most from the work being performed by workers do not pay the costs of the injury and the illnesses inflicted on those workers, it will diminish their reason for doing something to prevent the damage. Only when we treat injured and ill workers as human beings can we address that objective. Painting them as malingerers, frauds and cheats does nothing more than to insult those who have already suffered more than was needed.

The wealthy and rich of the province of Ontario used to lead the way for workers' compensation by being progressive and, until recently, constantly working towards improving the system for workers.

However indignant we may sound, this is not just about morality but about prevention as well. What we had hoped was that the compensation system would move forward to prevent hardship for workers instead of falling backwards, as Bill 99 does.

We do not wish to return to the abominable and inhuman conditions of the past. We believe the proposed legislation takes us back in time to the last decades of the last century when injured workers were simply discarded cogs in the industrial machine.

Bill 99 does not propose improvement or innovation but rather a return to something dreadful. We do not oppose innovation or improvement, but there are lessons to be learned from history. The proposed legislation ignores such lessons. Every other previous government, including more than half a century of Conservative rule since the creation of compensation law in 1915, has been informed by past experience and previous policy. Ironically, this current government has forgotten that many features of the system were originally set by Tory governments.

We have letters with us from the Archives of Ontario written by widows and injured workers. We think these letters are important for you to hear, because when we read a letter from the 1920s or the 1930s, after Bill 99 becomes law you can just change the date of each of these letters to read "1997."

**Ms Nancy Hutchison:** I've brought copies of the letters from the archives in the handwritten notes of the injured workers and widows. We've reproduced the letters in the brief but left out the names of the victims and the widows and some of the doctors. I think you should pay very strong attention to the dates of these letters and reflect what the people are saying to you in these letters and how Bill 99 will make history repeat itself.

The first letter, of June 1930, to the Premier of the day from T.N. of Espanola, Ontario.

"Dear Sir:

"I am writing you to know if you can do something in my favour. On September 14, 1928, while working for the Dominion Bridge Co at Froid Mine, I was injured when a piece of iron weighing about two tons fell on me. I was taken to the Copper Cliff hospital where they took an x-ray. I then asked the doctor if any bones were broken. He said no and that I would be all right. Although I knew I was badly hurt I thought he was telling me the truth. I stayed there five days. I asked the same doctor if I could go home. He said I could. Some weeks later I was transferred to Doctor H.G.H. It was about November 11, 1928, that he found my hip-bone was broken. He told me it too late, he could not do anything. He then looked after me. I lost about six months' work and went back to work with a very sore hip.

"I was never able to do the same work and cannot do it yet as my hip is yet very sore. If I am not careful with it or even in a cold spell it gets very sore, but I have to put up with it and I have to work to support my family. It's not my wish to lose any time either if I can't help it. Last fall my hip got so bad I had to stay home. I went to

Doctor H. and he told me to see the company's doctor in Sudbury. He did not like to start on me again unless he was again advised by the board so I stayed home thinking it would get better. After three weeks I went back to my work and my foreman, P.C., advised me not to work before they fixed my hip. He sent me to doctor J. in Sudbury. This doctor examined me and told me that I would get a letter from the board that they would tell me what to do. I came home and waited for a letter which never came.

"During that time I wrote two letters to my foreman telling him I had received no news from the board and wanted to work. I got no answer from him. I got tired waiting and wrote to the board myself. By the time I got their answer and wrote back it was about January 22, 1930. When they got me in Toronto where they examined me, a few days after I received a cheque of \$16.33 for the time I was in Toronto and a letter telling me that any further action would not be warranted.

"I had then lost three months and could get nothing for it. I went back to my foreman and I was employed in sticker-in, in a riveting gang until April 23, 1930. Then I was laid off.

"I got \$100 for my disability from the board which I would not accept at first, but they sent me a guarantee saying they would re-open my case if I needed to be again examined.

"I lost a lot of time and money but the board doctors will say they can't see the sore in my hip. It seems to me that they can. My left arm has remained  $\frac{3}{4}$  inches smaller. I have told them the facts and have did the best I could to get what is coming to me. I am in Ontario since the age of 10 and I am now 36 so I think I have rights to the laws of the province. I am well known here and many people know about my case and know that I did not get what is coming to me. I am sorry to trouble you. Thanking you and trusting you will answer.

"I remain, T.N.

"PS: My claim number is X."

I want you to remember when I read these that these are the way they were written by the workers. The grammar, the spelling, everything is the way we saw it in the archives. I've quoted the archive numbers at the bottom of each letter so you can go back and check if you feel you must, and we recommend that you do.

Now a letter answering that one from the Premier dated June 9, 1930:

"I have your favour of June 6 enclosing letter from this claimant and I am writing him as requested.

"In regard to his case would say it is a case where we have had him in Toronto for examination twice and the last time he was down in January of this year we had him x-rayed by Dr G.E.R. and had an examination by Dr G., and in his opinion there was very little disability, if any, and he considered he should be back at work; that he had a fracture of the ilium but the fracture was solidly united and there was nothing present to account for his symptoms of pain.

"The board therefore consider that no further allowance is justified.

"Yours very truly"



**Mr Hynd:** A letter from S.F., Sudbury, March 1938.

"Chief Conciliation Officer

"Department of Labour

"Dear Sir,

"I worked underground at the Garson Mine for 21 years, from 1910 until 1931, and in that year was discharged from service of the International Nickel Co without any seemingly justifiable cause. Two years later I was offered a job at the Falconbridge Nickel Mines but was turned down by Dr M., the government doctor and examiner, for pulmonary tuberculosis. In 1934 I was again fortunate enough to strike a job at the McMillan Gold Mines but again had the misfortune to be turned down by Dr M. Since then I have given up hope of getting a job underground again.

"I understand the compensation board makes allowances for cases such as mine. I asked Dr M. why I couldn't get compensation if my lungs were no good for underground work and he gave me to understand that my case wasn't bad enough for compensation. If it's bad enough to keep me from the only kind of work that I know, I can't understand why I am unable to collect some compensation. I would appreciate if your department would look into the matter as I have not worked to any extent since 1931, have lost most of the property I once owned and still have a family to support."

1650

**Ms Hutchison:** This letter is from M.M., Windsor, Ontario, dated 1930. They're in the brief, but we're reading them in random order, so you might have to jump around.

"Dear Sir,

"On the 30th of August, 1927, I had the misfortune to lose the sight of my right eye in an accident while employed by the Page Hersey Tubes Company, Welland, Ontario. The injury kept me from working for close on 12 months, during which I received \$16 per week and hospital treatment from the Workmen's Compensation Board, which I fully appreciate.

"It happened, prior to receiving the injury to my eye, I had invested in furnishing my home (necessarily, on the instalment plan, owing to my financial position) and during the time I was off work, those payments became due, and ultimately, went behind. To complete my worries, my wife took sick and had to undergo an operation, from which she has never fully recovered. Now, as you, sir, will understand my prosperous periods were taken up in paying off, as far as possible, those debts and every recurring period of unemployment put me farther in debt. I took the matter up with the compensation board to endeavour to come to a cash settlement on my pension, which (I omitted to mention is a pension of \$1 per month for life) so that I could consolidate my position, pay my debts and get a new start which would be influential also in improving my wife's health. I am fully aware this is against their usual procedure, but I hoped that my peculiar situation might receive consideration.

"They were unswerving in their attitude and unsympathetic, so now we have further complications to meet owing to the position of trade and industry at this time.

"I have been out of work for 10 weeks, having been last employed in the Ford Motor Company for a few

months (in fact I have only had 13 working weeks this year) and am behind again in rent and everything else. We already owe a month's rent, with another month coming due on the first of the month. We have a boarder who pays \$10 a week, but he must be fed and kept according to his contract with us, so my wife (who, as I already spoke of, is an invalid) and I are in semi-starvation. Not having any family we are not considered to be needy enough to participate in any of the relief measures.

"Sir, my point in writing you is to ask your assistance in trying to get a settlement with the compensation Board so as I could settle my debts and go home to the old country (Scotland, in my case) as my relatives there have hopes of me procuring work there, as I am a marine engineer by trade.

"I am an ex-serviceman, having served with the Argyll and Sutherland Highlanders (Imp. Army) in the Dardanelles and Egypt, having been in at the fall of Jerusalem, which country interested me as the scenes of the troubles of Gideon and the fearless of the 2½ tribes of Manassa.

"Hoping you will excuse my encroaching on your valuable time and hoping that you will be interested in my case.

"I remain, sir, respectfully yours, M.M.

"PS: I am enclosing my last letter from the board for identification purposes."

**Mr Hynd:** From the Provincial Board of Health, North Bay, in February 1914, to the chief officer of health for Ontario.

"Dear Sir:

"Learning from Dr G. that dissatisfaction existed between the Federation of Miners and the Mining Companies regarding the treatment given them at the Hospital in Gowganda, I accompanied him in there. When I visited this camp last summer, I had a number of sanitary improvements made, and the physicians and companies promised to send in their papers to you, and I expected this had been done. However, they are promised within one week now, or I prosecute.

"Without touching on the medical or surgical treatment given, but speaking from a fair understanding of the 'Health Act' in the case of A.H. who after being left in camp nine days with injured foot and leg, when taken to the hospital became deranged, then after 36 hours removed to jail and dying there shortly after, was reprehensible.

"Taking the word of the men, it has been customary for them to be discharged from the hospital before being able to do any work and we found one S.B. suffering with a broken collarbone living at the hotel and at his own expense as far as known, after being in the hospital two weeks, the company (or the hospital through agreement) should be responsible for his maintenance during illness. This is one of several of the same nature mentioned to us.

"In the above matters mentioned, I believe the men have a grievance. Of course Drs R. and C. have an uphill job maintaining a hospital so remote and with so small an income, as the different mines do not employ very many men."

**The Chair:** I'm sorry to interrupt, but you only have a minute left in your presentation time.

**Mr Hynd:** Let me try and wind up. There are other letters, but this is to try and bring some focus to the current government about going to the bottom, going to the lowest common denominator. The excuse the government has in reducing the payments to those who receive compensation is because the governments in the Atlantic provinces have reduced the payments. This is what we will return to, because if Ontario succeeds in reducing their levels to those in the Atlantic provinces, the Atlantic provinces will go lower and Ontario will follow, and the Atlantic provinces will go lower again.

These are honest working people being disadvantaged by a mean, mean act, Bill 99. I don't know how anybody can describe it in any different terms. It's mean and reprehensible. It's terrible.

**The Chair:** Thank you very much. On behalf of the committee, we thank you for bringing forward your presentation and appreciate your taking the time this afternoon.

**Ms Hutchison:** Please read the brief.

PARKDALE COMMUNITY LEGAL SERVICES  
TORONTO WORKERS'  
HEALTH AND SAFETY LEGAL CLINIC

**The Chair:** I now call upon representatives from the Parkdale community legal clinic. Welcome to the hearings. Please introduce yourselves for Hansard.

**Ms Jan Borowy:** My name is Jan Borowy. I'm a community legal worker at Parkdale Community Legal Services. With me are Ted Hyland, a student at law, working at Parkdale; and Dan Ublansky and Linda Vannucci-Santini, from the Toronto Workers' Health and Safety Legal Clinic. The health and safety legal clinic, unfortunately, did not make it through the first round of people able to speak. We've invited them to attend and participate in our presentation because of the incredibly valuable contribution they'll make.

Parkdale is a community-based legal clinic here in Toronto. It's a community where over 30% of the workers in the community are unemployed. It's a community made up of recent immigrants and visible-minority workers. At Parkdale we represent workers on a variety of issues, including employment insurance, employment standards. Our caseload on workers' compensation is roughly 20%.

We also coordinate the Toronto bad boss hotline, and what's very interesting is that one out of 10 calls to the hotline is about health and safety issues in the workplace and, increasingly, problems workers face due to the lack of enforcement of health and safety, which is directly related to this bill.

Our clients and those who call us on the hotline have no voice or little control in their workplace. If they speak out against an action by their employer, they are terminated, forced out of work or seriously mistreated. They're the workers who are unorganized and are not represented by unions. It's from our perspective of this work, that of the unorganized and vulnerable workers, that we want to respond to Bill 99.

1700

The injured workers and their families that we see in our clinic view workers' compensation as an important

line of defence against slipping into absolute poverty following an injury at work. It's not only a question of financial compensation as a substitute for lost income, but equally important for them is the process of medical rehabilitation and vocational retraining to get back to work.

Our clients wanted to testify today. The two who were hoping to come along were unable to do so because of child care responsibilities. I had asked that our presentation be rescheduled, but because of the extremely limited time you've allocated to discussing this bill, it meant they didn't have a chance to present to you. They actually feel as if you don't want to listen to their stories and wanted us to ask why you will not open up the hearings and provide a minimum of at least one day of assembly style hearings so they can present their views. Currently, they're feeling as if this set of hearings is quite a sham.

To go on to the substantial issues, there are four we'd like to discuss relating to our clients we work with at the clinic: entitlement, income, board discretion and independent appeals.

From our perspective, Bill 99 fundamentally alters workers' access to workers' compensation. It forces workers to go to their employer for a form to file a complaint. Moreover, the employer now has three days to report an accident. The legislation is poorly written and so unclear about the process if a worker's employer refuses to give a worker a claim form that we don't know what's going to happen, but it seems to us that what will essentially happen is that workers will be denied access to workers' compensation. Currently, our clients go to their doctors. That's the main access point for workers' compensation.

If you're an unorganized worker, the chances of getting your job back when you've been injured are very slim. Most unorganized workers actually rely on vocational rehab to improve their access to a new job after their injury. It's very clear that by expecting a worker to go to the employer for a claim form, workers will be denied access to compensation and voc rehab.

It's very clear as well that an employer will deny the accident has happened or certainly intimidate the worker to prevent them from making a claim. Already at our clinic we have people calling us and people walking through our doors asking us, "What should I do?" Their employers are trying to swing a deal with them. They're trying to offer to pay them instead of submitting a claim, in fact removing the workers from workers' compensation protections in the exact process of workers' compensation.

As well, we could tell you many, many stories. We have a story of a woman who was a bartender in a small workplace. She did not immediately report an incident to her employer when she injured her back. That's because she feared she was going to lose her job. Her fears were well founded. In a previous incident where she cut her hand, her doctor had submitted the WCB claim. The employer, subsequent to that first claim, constantly reminded her of her claim and that she would be fired if she had any other further incidents. When she injured her back, the board denied her claim. We've been fighting for her. They deemed it was not work-related because she



failed to report it to her employer. It seems to us that unorganized workers know that filing a claim is the first step out the door. They know they've got a choice. They either will lose their job or have to work injured.

There are many other instances. I'm at five minutes; we have such a short period of time.

One is the six-month time limit. This again will serve to reduce claims and deny workers access to WCB.

Yesterday we had a worker come into our clinic. He was a parking lot attendant. He works alone in a booth at an isolated lot. Last summer, he was beaten up and robbed while working. Subsequent to this, his back and neck have been giving him serious problems. His employer, to date, has been silent about his claim. What's very interesting is that this happened way outside the six-month time limit. Our question is, what happens to this worker? Under the limitation period in Bill 99, chances are he would be denied access to workers' comp or have to put up a huge fight with an advocate to get there.

Another point is the issue around expanded coverage. Workers' compensation under Bill 99 is moving in the exact opposite direction from which it should. In particular, we work quite extensively with home workers, temporary and casual workers. They should be included in this act. We see home workers with repetitive strain injuries, shoulder and back problems as a result of their work. That's work done; they should be covered.

Mental stress: Bill 99 removes entitlement to mental stress unless a worker meets four very stringent conditions. It turns around and adds further protections for employers around their actions relating to work.

We feel the Minister of Labour, Elizabeth Witmer, has been seriously misleading the Legislature and the people of Ontario when she states that a woman who is sexually harassed will continue to have access to workers' comp. Women who are sexually harassed are being abandoned by the system. Sexual harassment is not a sudden event. Harassment is a cumulative set of actions and builds over time. Often, it's related to the actions or inactions of employers.

Yesterday we were part of a press conference outlining how the Human Rights Commission is abandoning women's harassment claims. Today we're here to tell you that it's very clear that Bill 99 is doing the same thing. As we discussed previously, this section is open to a charter challenge.

I'll leave the issue of chronic pain to my colleague.

We would like to add that we urge the government not to reduce the level of compensation from 90% to 85%. This is a particularly disturbing element of Bill 99. One of the other disturbing elements is the removal of any legislated definition of income for the purpose of determining the level of compensation due to an injured worker. We call for the extension of full indexation of benefits, at least for those who are permanently disabled.

I could go on about the shift in the board's discretion it will exercise in the lives of our injured workers and our clients. We feel this will not be helpful for any of our clients. When we meet with them, they say, "When you're dealing with the board, you have to be careful when you're talking to them; they look for any chance to

cut you off." It's like the time they cut me off because of the misunderstandings of one of our clients.

Finally and most important, while some of the role of the board has been intensified, it is playing a very secondary role when it comes to assisting a worker for developing a plan to get back to work. The onus is now on the worker, who in no way has the same power as their employer. It's up to them to turn around and go back to that employer to start to reorganize a return-to-work plan. The worker is going to be left alone to try and establish what those terms and conditions are going to be. That will be a system that we see will not benefit unorganized workers.

We can go on about our concerns with the tribunal, perhaps later, in the set of questions. We feel there should be a very strong independent set of appeal procedures. I'll leave it at that and turn it over to my colleague.

**Ms Linda Vannucci-Santini:** Concerning the occupational health and safety aspects of Bill 99, the bill changes the name of the board to the Workplace Safety and Insurance Board and moves health and safety promotion and injury prevention from the bottom to the top of the act's lists of purposes, but cynics will point out that the promotion of public awareness and education of employers and workers about health and safety has always been considered part of the mandate of the Workers' Compensation Board. That's why the board has historically provided funding for the safety associations.

Unfortunately, the board did very little to monitor how this money is being spent and this led to complaints about the administrative structure of the associations and the quality of the programs. The Workplace Health and Safety Agency was created in 1990 to remedy the situation and was given the exclusive mandate to develop health and safety training programs and to oversee the operation of the safety and accident prevention associations. The agency was governed by a bipartite board of directors comprised of representatives of management and labour.

This government disbanded the board, dismissed the board of directors and placed it under the control of an interim director. It's been in limbo ever since. Bill 99 closes the book on the agency by pronouncing it officially dead and transferring it to the board.

In substance, Bill 99 does nothing more than restore the status quo as it was prior to the creation of the agency. It certainly does not signal a bold new shift in direction at the board. The board has performed this role before and without distinction. The challenge would be for the board to do a better job of overseeing the network of safe workplace associations and other health and safety partners in addressing health and safety hazards than it has in the past. But Bill 99 offers no clue as to how the board proposes to meet this challenge.

It should be noted that the health and safety promotion unit within the board will undoubtedly be smaller, in terms of both human and financial resources, as compared to the agency. Thus it is not immediately obvious that the board will perform these functions more effectively than the agency which did nothing else.

Concerning prevention of injury and disease: Although health and safety promotion and injury and disease prevention are listed separately within the board's purpose clause, Bill 99 sees the two as going hand in hand. The improvement in accident and disease rates will depend on the effectiveness of the promotion and education programs. As the Ministry of Labour fact sheet points out, "The board's goals will be to promote safe and healthy workplaces by encouraging employers and workers to make health and safety a top priority."

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Bill 99 also expands on the system of financial incentives which are intended to encourage employers to invest in health and safety by allowing the board to provide financial assistance to an employer who will modify the work or workplace to allow an injured worker or a spouse of a deceased worker to re-enter the labour force. Critics of the board's experience and merit rating programs have raised serious questions about the effectiveness of these schemes in actually bringing about health and safety improvements in the workplace.

Since the measure of success in these programs is a reduction in claims experience and costs, it is argued that employers are more likely to engage in inappropriate claims management tactics than invest in health and safety. This is the case because the amount of financial returns available through merit rating programs is actually generally far less than the cost of actually cleaning up the workplace. Although merit rating is a common feature of most workers' compensation systems, there have been few studies done to verify their effectiveness, and the ones that have been done have shown inconclusive results. Bill 99 requires the board to evaluate the consequences of any proposed change in programs and policies. Hopefully the board will see fit to do the research necessary to confirm that merit rating actually produces investment in health and safety before any future enhancement of that program occurs.

Concerning the occupational disease panel, Bill 99 eliminates the ODP, which was created in 1985 to investigate possible occupational disease and report to the board on probable connections between diseases and occupational exposures. It is stated in the Ministry of Labour's fact sheet that this will ensure better coordination of research into occupational disease and injury and improve decision-making in occupational disease and injury claims.

As was the case with the agency, the functions of the ODP will be transferred to the board and some significant changes will be made to its mandate. The mandate was to investigate possible occupational diseases and to make findings as to whether a probable connection exists between a disease and an industrial process, trade or occupation in Ontario and to create, develop and revise criteria for the evaluation of claims respecting occupational diseases and to advise on eligibility rules concerning compensation.

Under Bill 99, the board is not expected to originate investigations or develop policies independently to deal with Ontario workplaces. Instead the board will only monitor developments in the understanding of the relationship between work and the prevention of injury and

occupational disease, and the relationship between workplace insurance and injury and occupational disease so that — and this is the term — "generally accepted" advances in health sciences and related disciplines are respected in benefits, services and programs and policies in a way that is consistent with the purposes of the act.

This language seems to place a variety of hurdles in the path of occupational disease recognition at the board, most of which are unrelated to the quality and persuasiveness of the scientific or medical evidence. What will it take for advances in scientific knowledge to become generally accepted? Will generally accepted advances in scientific knowledge be ignored if the financial implications for the board are considered unacceptable? What does recognition of occupational diseases have to do with improving the efficiency and effectiveness of the insurance plan? I'm going to turn it over to my colleague.

**Mr Daniel Ublansky:** Time grows short. I just will make a couple of comments on two issues.

The issue of stress: I think that the provision in Bill 99 which eliminates chronic stress claims, while it may not affect that many people since there aren't that many chronic stress claims that have been accepted, to me is a symbol of the unfairness of Bill 99.

In the mail today I received a copy of a mental health survey done under the auspices of the Canadian Mental Health Association, which found that 40% of Canadians believe that they are subject to serious stress at work; that's 40% of Canadians. That's a very large number. Those same people also identify the attitude of their employer as being negative: 57% of those responding to this survey said that their employers are either not dealing with stress at all or not dealing with it in an effective way.

What kind of a message does Bill 99 deliver to employers in this province? It says you can ignore this very significant problem that 40% of Canadians are experiencing and it says that you don't have to do anything about it because they can't file a workers' compensation claim anyway. Again I go back to the minister's claim that she wants to make Ontario the safest place in the world to work. I don't think so.

Also today in the mail I received a copy from the Workers' Compensation Board, which apparently hasn't heard that the bill isn't passed yet, apparently has published its guidelines for chronic pain. This is outrageous. Chronic pain, which has been recognized in this province for 10 years, is virtually eliminated by this policy document.

**The Chair:** I'm sorry to interrupt but I think you need to know there's only a minute remaining in your presentation time.

**Mr Ublansky:** Thank you. What it boils down to is, people who have been previously on benefits, for years or perhaps for life, will now be on benefits for four weeks at best and perhaps not at all. What is going to happen to all these people who have previously been receiving benefits for chronic pain? The answer to that is social assistance. You're just downloading the program to welfare.

When we're talking about chronic pain, as opposed to stress, we are talking large numbers. There are many,



many injured workers who are receiving benefits for chronic pain. All of that is going to continue, and the people who experience it in the future, instead of collecting WCB benefits will be collecting welfare, if they can qualify for that.

**Ms Borowy:** We realize that we probably just have 15 seconds left. What we request is that the committee, in case you wanted to slip in any questions for us — actually before doing that, we want you to answer a question for us and we're quite serious about this, and that is: How shall we explain to that parking lot attendant who was beaten and would be ineligible, how do we explain to the woman who is harassed, how do we explain to the woman who will be cut off chronic pain benefits when she has her RSIs, how do we explain to the waitress I didn't even have a chance to tell you about who was fired when she filed another claim, how will we explain to them that the provisions in Bill 99 create a more efficient system that looks after their needs?

**The Chair:** On behalf of the committee, we thank you for taking the time to come before us today. We appreciate your views and will consider them carefully.

#### CANADIAN AUTO WORKERS

**The Chair:** I'd like to now call upon representatives from the Canadian Auto Workers union. Welcome, Mr O'Neil; and if you would be so kind as to introduce your colleague.

**Mr Jim O'Neil:** My name is Jim O'Neil. I'm the national secretary-treasurer of the CAW, and with me is Nick De Carlo, who works in our health and safety department and is responsible for workers' compensation in Ontario.

We have a written brief. I believe it has been handed out, has it?

**The Chair:** Yes, we have it.

**Mr O'Neil:** I'm just going to highlight from certain areas of it.

The National Automobile, Aerospace, Transportation and General Workers Union of Canada is the largest private sector union in the country with a membership of upwards of 210,000 workers; 68% of our membership, 143,000, is here in Ontario. We are the largest private sector union in the province. We represent members in automotive parts production and assembly, in aerospace manufacturing and assembly, telecommunications and electronics, in air, rail and marine transport sectors and in the mining, fisheries and hospitality sectors. Bill 99 has a major significance for our membership.

First, we want to declare our opposition to the manner in which Bill 99 is being railroaded through the Legislature of Ontario without room for meaningful public input. Bill 99 involves a complete rewrite of the Workers' Compensation Act. Bill 99 is a bill affecting the entire future of safety, labour relations and the treatment of workers injured on the job. Consultation on such a complex bill with such serious implications for the workers of this province must allow adequate time for presentation and discussion. This is not the case.

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As of early June there were approximately 600 requests in the Toronto area and 1,300 requests for all

Ontario to make presentations to your committee regarding this bill, before the bill had even been referred to committee. This is among the largest number of requests ever for consultation on any bill. Yet only four days of hearings have been scheduled in Toronto for a total of 10 hours. Only 30 presentations will be made and only six hearings are scheduled for around the province.

Only a handful of those who have requested standing will have an opportunity to present. Requests for standing have poured in from injured workers and their representatives. Yet the response of the government is to effectively shut them out. Injured workers should be allowed to make a presentation at a public meeting to the Minister of Labour.

The fundamental concept of the workers' compensation system is that employers are responsible to compensate workers who are injured at work. In Ontario the first Workers' Compensation Act enacted, based on a report of the Meredith commission, written by Justice Meredith, who was a former leader of the Conservative Party of the day, established firmly that workers had a right to compensation for injuries at work. Workers gave up their health and wellbeing, and yes, in some cases, their lives, in order that employers profited and so employers had the responsibility to compensate workers injured in their employ.

Today, under Bill 99, while cutting benefits for injured workers and handing over money to corporations, while limiting entitlement to compensation for various kinds of injuries, while giving increased power over injured workers to employers, the Conservative government is preparing to transform the system into a for-profit system controlled by private insurance companies, handing them a multibillion dollar windfall. The Ontario government is attacking the Meredith principles.

Bill 99 has no redeeming qualities. We oppose Bill 99. We urge this committee to recommend its retraction.

First of all, Bill 99 attacks workers' benefits. Immediately, income for injured workers will be reduced by 5.6%. This is in complete contradiction to promises made by the Harris government not to attack the disabled. The very people who can least afford it, injured workers, are being asked to pay the bill to cut costs of workers' compensation in Ontario. Employers, on the other hand, are given a 5% gift in the form of reduced payments to the Workers' Compensation Board. This is a loss of \$6 billion in income over the next 17 years.

In workplaces across Canada the incidence of injuries is growing, particularly repetitive strain injuries, occupational stress and occupational disease. This is due to the speedup and downsizing. The new act is designed to dramatically reduce the right to entitlement to benefits for certain injuries and reduce the number of claims for other injuries.

Injured workers will also be cut off by the application of "normal healing times." The concept of normal healing times was discussed in the Jackson report and has recently been introduced at the board by an administrative measure. Under this policy the board determines the amount of time a worker will require to heal, based on an arbitrary meat chart. If the worker is not healed in the required time, he or she will be cut off.

The number of claims will also be reduced by time limits introduced under Bill 99. The bill places a six-month time limit from the date of injury for filing a workers' compensation claim. This time limit will make it extremely difficult to file claims for repetitive strain injuries and back injuries. Injuries such as repetitive strain injuries occur over a prolonged period. It is not clear at which point the injury occurs. A time limit on application can be used to disqualify workers with these types of injuries.

The combined effect of several changes made under Bill 99 will give the corporations more power over the worker and undermine the independence of the workers' compensation system.

Employers will be involved in and interfere with workers' compensation claims right from the beginning. Under Bill 99 workers must file their own claims. Previously a doctor could file the claim.

Workers already are reluctant to claim compensation. Having to obtain the form from the employer will make it more difficult. Workers, particularly those whose first language is not English, or who do not have a high level of education, will be intimidated. Imagine the combined intimidation effect on a worker who does not speak English well and is in a non-union workplace. Employers will take advantage of changes to the application system to intimidate and influence workers.

The worker must authorize release of medical information to the employer. Should the worker refuse to do so, he or she will not be entitled to benefits. The employer will have increased power to force the worker to see a company-chosen doctor. Companies will recommend treatment by the company physician. The worker will be faced with the choice of cooperating with the employer or being denied a job to return to or, at best, experiencing greater difficulties with the claim.

If the employer is happy with the worker, the company may choose to return the worker to a job. If not, the employer can force the worker into a labour market re-entry plan. The worker, knowing that the company controls the options, will be forced to cooperate by returning to work, whether physically ready or not. While employers will have more power, workers will have less right to the choice of medical care, less right to object, less right to appeal and fewer organizations to represent their interests.

The Workers' Compensation Appeals Tribunal, renamed the Workplace Safety and Insurance Appeals Tribunal, will be required to follow board policy. Previously independent and able to make decisions based on law, they will be prevented from doing so. The emphasis in Bill 99 is to eliminate worker representation on the tribunal. Furthermore, three-person panels with labour representation will be effectively eliminated. There always was at least some sense of fairness when a worker had a union nominee to hear their case.

It is ironic that one of the government's claims for Bill 99 is that it carries a strong prevention focus. Yet the same day, April 24, 1997, that the labour minister introduced Bill 99 to second reading at Queen's Park, she was consulting in Toronto about the government's discussion paper on the Occupational Health and Safety Act. This

paper proposes gutting workers' rights to refuse unsafe work, to know about workplace hazards and to participate in health and safety committees.

The Ontario government claims the workers' compensation system is too costly. They claim that the board is in financial crisis and the unfunded liability is out of control. What is the reality? First of all, the unfunded liability is not a debt. Rather the unfunded liability is the net difference between the WCB's present assets and its expected liabilities. The board is not in debt. As a matter of fact, at the end of 1996 it had assets of over \$8 billion, lower than in previous years.

Nor is the board in a financial crisis. Last year, 1996, the board accumulated a surplus of \$426 million — not bad money for any corporation. In 1995 it had a surplus of \$510 million — in two years close to \$1 billion.

Costs of compensation are not high in Ontario. The average cost to employers in 1995 was \$2.85 per \$100 of payroll. In fact, costs are lower when experience rating rebates of approximately \$400 million are calculated in. If coverage was extended to all workers in the bank and insurance industry, costs would drop to less than \$2 per \$100 of payroll. Employer costs dropped by 12% between 1995 and 1996.

The real factor that will cause a financial drain on the WCB is the 5% drop in employer assessments proposed by Bill 99. The reality is that if employer costs for workers' compensation are a problem, it is because workers are getting injured. The real solution is to reduce the number of injuries.

We need improvements to the workers' compensation system. Today, the combination of speedup at work and the introduction of new, dangerous chemicals in the workplace are leading to increasing numbers of injuries and deaths caused by employer greed and government compliance. More workers are getting injured while fewer are being compensated. Workers need more protection today, not cuts.

The government should concentrate on the real priorities of workers: a safe and healthy job, safety in the workplace so that workers can work and contribute to society without fear for their health and security, enforcement of safety standards; a workers' compensation system that guarantees the right of workers to full compensation for workplace injuries and the right to return to a meaningful job; maintenance of a publicly administered, not-for-profit system funded entirely by employer funds, as legislated in Ontario in 1914; workers' compensation coverage for all workers, including bank and insurance workers and independent operators; equal representation for workers on the workers' compensation board of directors; a full cost-of-living protection for injured workers' benefits; adequate recognition of injuries based on exposure to occupational diseases, including occupational stress overload; ending the experience rating system that encourages employers to hide accidents by not reporting them and pressures workers to return to work while injured.

Labour relations through this bill will certainly deteriorate over this issue. You can't take away workers' rights and allow them to be injured with no recourse and not



raise anger within the workplace. You can't expect anything but increased tensions in the workplace as workers fight it out with employers over issues of medical confidentiality and company control over medical treatment and their return to work.

We therefore conclude by asking this committee to withdraw the entire bill. Thank you.

*Applause.*

**The Chair:** Order, please. Members in the audience, I caution you, this is a standing committee. The standing orders of the Legislature indicate that no applause or demonstrations of any kind are allowed. It will not be tolerated.

Mr De Carlo, did you want to add to the presentation?

**Mr Nick De Carlo:** I'd just reiterate that the reality out there is that the situation is already deteriorating in the workplace. What's happening to people who are injured on the job — one of our members refers to it as the "one-bounce theory." You fall off a ladder and before you bounce the first time, there's a job for you, but it's not a meaningful job. It's a way of covering up the injury and covering up the compensation case and getting an experience-rating rebate.

That's happening today, without this bill being brought in. Once this bill is in, the situation is going to deteriorate dramatically. You are going to have, inevitably, conflict in the workplace. You can't blame injured workers for the anger they feel about this bill and you can't expect that it's simply going to go ahead peacefully without some form of problem. It is inevitable. I encourage you, along with Brother O'Neil, to seriously reconsider implementing this bill.

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**Mr O'Neil:** I might also add that instead of being critical of those in the audience applauding about what they sense is an injustice to workers, I suggest that what you should be doing is criticizing the employers within this province for coming forward and supporting this archaic legislation.

**The Chair:** We have five minutes remaining for questions. That leaves a brief time for questioning from each of the caucuses. We will begin with the government caucus.

**Mr Bart Maves (Niagara Falls):** Thank you very much for your presentation. A couple of things, first being the minister on the occupational health and safety. You said she wants to "gut" the right to refuse. She was actually quite clear in saying she wasn't interested in removing the right to refuse. I wanted to make sure that anyone who is watching knows that. There were some problems around the right to refuse and the discussion paper was there. They might discuss that, but she's —

**Mr O'Neil:** I've seen a presentation by the auto manufacturers' association that has been put forward to the Minister of Labour, supported by the Big Three — GM, Ford and Chrysler — that totally guts the right to refuse. I've seen it. It was presented to your minister.

**Mr Maves:** I know, and I've met with several representatives from CAW and explained that the right to refuse in the discussion paper was just that, a discussion paper.

You also said, "The worker must authorize release of medical information to the employer." What we said is that the functional abilities form needs to be released to the employer and there won't be any medical information on that. It'll talk strictly about the functional ability of that worker in an effort to return them to work. That's something we'll continue to try to clarify.

The question I have for you is about issue that's come up with a couple of presentations, and it does concern me. It's illegal under the act for employers not to report an injury, and the fines for that have increased over time, yet we hear many people coming forward saying that employers do refuse to report.

I have also heard from a previous presenter about the difficulty of getting a claim form from an employer. How could I make it easier for an employee who might feel intimidated going to an employer for a claim form to do that? Should I make a rule that they have to be available in the workplace, a public place where they can go and get them? Is there something I can do to make them more available?

**Mr O'Neil:** What's wrong with the present system?

**Mr Maves:** So they should remain in doctors' offices also?

**Mr O'Neil:** Yes. If the worker is injured, we would hope and we would support the fact that a worker should go to see a doctor. Report it to the company, but after that go and see the doctor.

To say that, you obviously haven't been in one of our workplaces recently. You should walk through a workplace, injure yourself and see whether the employer tries to hide that injury. It happens every day. Don't be fooled by what the employers tell you. Go into a workplace, spend a summer there. You'll find out.

**Mr Maves:** I actually spent about five summers in General Motors in St Catharines.

**Mr O'Neil:** Did you ever get hurt?

**Mr Maves:** Yes, I did.

**Mr O'Neil:** Did you ever file a claim?

**Mr Maves:** I didn't, no.

**Mr O'Neil:** Why not?

**Mr Maves:** Not because I felt intimidated. I didn't feel intimidated at all.

**Mr O'Neil:** By the way, you had an obligation. If you were injured, the employer should have —

**Mr Maves:** Right. One of the problems we have is educating students. That's why this government has undertaken a program to educate students about what they should be doing in those situations in the workplace.

**Mr Agostino:** This bill doesn't really take into consideration not only the pain and difficulty injured workers go through but the stress the whole system puts on them, their family life, their ability to deal with their kids, their income, all of those things, which obviously are often quite difficult. Unless you or a family member have been in that situation, it's very hard to understand.

You've spoken well to many of the problems in the bill. When you see a bill like this come forward, what do you think that will do to the ability of that individual and that family to continue to deal with not only the injury but trying to work through a compensation system that is

going to be absolutely pointed against the worker, against their family? How do you see that adding to the overall problem a worker will have as a result of this bill being implemented?

**Mr O'Neil:** If the bill gets implemented, it's going to have a major impact, first of all, on workers collecting compensation, reporting injuries. The employers will intimidate them. All I can say is that it'll be chaos. I should add that you shouldn't expect workers and the unions that represent them to stand still for this. There will be a fight in the workplaces. We are not going to let this government or any other government gut the health and safety and workers' compensation benefits provided in this province. It's turning this country back into something like it was 100 years ago, something we're not going to stand for.

**Mr Christopherson:** Thank you both for your presentation. I appreciate it.

Just quickly to the parliamentary assistant, because it has to be responded to, if you think for one minute that anybody in this province who works for a living doesn't believe that when you touch the Occupational Health and Safety Act you're going to take something away from workers, you're kidding yourself. With everything you've touched, you've taken away from workers and added nothing: the Employment Standards Act, the Ontario Labour Relations Act, the Workplace Health and Safety Act, the Occupational Disease Panel, pay equity. With issue after issue you've taken away rights of workers, and you're bloody well going to do it under the Occupational Health and Safety Act. You're not fooling a single person out there.

Let me ask Jim and Nick about one issue that's come up time and time again. That's the Occupational Disease Panel and its importance to auto workers, particularly to those who lose their lives and their spouses and survivors, and what it means to see that killed and folded back into the WCB. What's your take on how that's going to affect your members?

**Mr De Carlo:** What this means for our members is a very serious area. Approximately 8,000 people a year are estimated to die from occupational disease in Ontario. The Occupational Disease Panel, even with a limited budget, even with limited resources, has been able to establish in a number of areas occupational disease studies that have given benefits and started to make some inroads in the area of occupational disease in Ontario.

When this is gone, and it will be gone under this bill, workers will have nowhere to turn to get expertise and research done. Unions will not have the resources we can apply to the research that's needed. We know that every year more and more chemicals are being introduced in the workplace, with no clear proof in terms of what the effects are going to be, and that means occupational diseases are going to have to rise. The pressure to deal with this issue will be reduced by eliminating the Occupational Disease Panel. That's a serious matter.

**Mr Christopherson:** Thank you both, and thanks for the leadership the union has shown in this whole area.

**The Chair:** Gentlemen, on behalf of the committee I thank you for taking the time to come before us this afternoon. We appreciate your advice.

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## CANADIAN FEDERATION OF INDEPENDENT BUSINESS

**The Chair:** Our next presenters are from the Canadian Federation of Independent Business. Welcome. We're glad you are able to join us this afternoon.

**Ms Judith Andrew:** Good afternoon. I'm Judith Andrew, the executive director of provincial policy with the Canadian Federation of Independent Business. Joining me is my colleague Brien Gray, who is CFIB's senior vice-president, legislation and policy.

I believe the clerk has distributed our kits. Contained therein you'll find our brief on Bill 99 and a number of other supporting documents, including our submission to the Honourable Cam Jackson dated March 1996, as well as a couple of other charts which I'll refer to as we go along.

CFIB appreciates the opportunity to appear before the standing committee today on Bill 99. We are a national business association dedicated to representing the views of independent Canadian-owned businesses before government. The federation's membership of small and medium-sized businesses is quite representative of the business population overall by size, age, sector and urban and rural split. About 40,000 of our 87,000 member first actually do business here in Ontario.

Over the years we've conducted a considerable number of surveys on the workers' compensation issue. Workers' compensation has ranked in the top three or four priorities for CFIB action in the regular survey we do. The recent one, for the first quarter of 1997, which was a survey of 3,500 Ontario firms, found our member concern about the WCB at over 55%. That issue is surpassed only by the issues of regulation and paper burden, deficit and debt reduction, and of course total tax burden. You'll see that illustrated in figure 1 at the back of the brief.

Turning to figure 2, the provincial survey analysis for Ontario shows that within the issue of total tax burden, workers' compensation heads the list of the most harmful taxes to business, with 60% of our members registering concern. I would note that in that list of punitive taxes the worst ones are the profit-insensitive payroll and property taxes, those that fall due regardless of whether the firm makes any profit.

We have been active on the WCB issue since the early 1980s, when it first became apparent on our surveys as an impediment to small business growth. In fact, in 1987 we commissioned and published a comprehensive economic and actuarial study of the system. Over the years we have built up a comprehensive array of CFIB member votes, mandate votes, on various policy aspects of the system. These are included as an appendix to the submission to Mr Jackson. We also delve regularly into specific complaints and problems occasioned by the WCB, and you'll see a breakout of those in figure 3 appended to the submission.

I'm here today to talk about the critical need to overhaul the workers' compensation legislation and its administration to do two things: (1) to secure the future benefits to injured workers; and (2) to stabilize the assessment premiums for employers.



The case for reform is very well made in the WCB's annual report results and in government data of the last few years. I would like you to look at figure 4, which is the lost-time injury rate. I think it's also included as a separate page in the kit. The lost-time injury rate in Ontario has been reduced by more than half, which is astonishing, from the 4.4% peak through 1986-88 down to 1.9% in 1996. In absolute terms there's been a substantial decrease as well, and you can see this in figure 5 of our submission. Lost-time claims decreased 46%, from about 192,000 claims in 1988 to about 104,000 claims in 1995.

Meanwhile, the benefits spending increased 50%, from \$1.6 billion in 1988 to \$2.4 billion in 1995. It's not the case that most recent injuries are more serious and therefore more costly. In fact, the average duration of claims, which is an indicator of the seriousness of the injuries, has also been reduced from its 1991 peak.

If you look at figure 6, you will see what small business owners are greatly disturbed about, and that is the juxtaposition of the two opposing trends: benefits spending increasing by 50% at the same time that schedule-1-allowed lost-time claims decreased by 46%.

Smaller employers find it very hard to put any faith in statements made to the effect that they would enjoy assessment relief if only they reduced their accidents. That's not the case. They've reduced their accidents quite dramatically and there hasn't been assessment relief.

CFIB supports the government's goal of making Ontario workplaces among the safest in the world. One important way of doing that is to ensure that the system costs do not keep escalating despite the strides being made on the occupational health and safety front.

I would also point out that the overall cost of administering those 46% fewer claims increased by 31% over the period 1988 to 1995. We now have close to 4,600 WCB staff, which is 210 more people than in 1988, administering those fewer claims.

I guess it comes down to the unfunded liability, the difference between the value of the WCB's assets and what it owes in the future. That currently stands at \$10.5 billion. Most of this unfunded liability is related to future payments to injured workers who are currently on WCB rolls. Our unfunded liability is the largest in Canada; it exceeds the combined unfunded liabilities of the rest of the provinces. Actuarial analysis shows that it's not heading in the right direction if nothing is done. In fact, it would grow to more than \$14 billion by the year 2014 if there is no change made.

There is simply no more room on the assessment premium front. Ontario's premiums are second-highest in Canada and considerably higher than those in the United States. Within the premium, the average \$2.85 rate, the unfunded liability costs 83 cents. If we had no unfunded liability, employers would be paying about 30% less than they do now. For each new worker hired, an employer assumes a share of the unfunded liability equal to about \$4,000. You have very concrete disincentives to invest and create jobs in Ontario because of the WCB's financial status.

Anyone who maintains that the unfunded liability doesn't matter because the WCB has had a couple of

recent annual surpluses is taking a short-term view of the financial situation. Small businesses want a fair system, but it has to be fair both to employers and employees, that will continue to serve injured workers and employers in the long term.

We believe that reform of the system is long overdue, and we welcome the government's determination to deal decisively with this major problem area for independent business.

On some of the specifics in Bill 99 which we support, we support the measures aimed at restoring financial integrity to the system. The overriding objective is to get the financial plan back on track and retire the \$10.4-billion unfunded liability by the year 2014.

The CFIB supports the modification of the benefit level to 85% of net average pre-injury earnings. Our members voted strongly in favour — 91% — of limiting WCB benefits so that employees' original earnings are not exceeded. In fact, we had recommended that the government adopt the staggered approach to benefits that's currently in place in the four Atlantic provinces. At 85%, Ontario's benefit level will continue to be generous vis-à-vis other areas of the country. It should be clear that the change only applies to workers injured after Bill 99 is enforced. Workers on existing claim are not impacted by this change.

CFIB also supports the further modification of the indexing formula, which has the effect of reducing the unfunded liability by an additional \$9.3 billion, and this builds on the \$18-billion savings yielded by the former government's introduction of the Friedland indexing formula. This is accomplished under Bill 99 while still protecting those individuals who are 100% disabled and protecting survivors from inflation erosion.

We favour returning the system to a workplace insurance plan. An insurance plan requires clear, contractual language leading to certainty for both the policyholders and the beneficiaries. Accordingly, we support the amendments that will exclude or curtail the grey-area claims such as chronic stress and chronic pain. Additionally, we support the changes that bind the appeals tribunal to WCB policy and that integrate the functions of the Occupational Disease Panel into the WCB.

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We also agree with returning workplace safety and health to the WCB, as prevention is the flip side of compensation and it is better to prevent up front than pay for the consequences of accidents after the fact. The other advantage is that the WCB also has the database, which should be exploited to focus prevention resources to best advantage.

Small business supports the goal of achieving early return to work, and it's clear that cooperation between the employer, the worker and the board is pivotal to success in this area. The provision of functional ability information to the employer will assist.

I would like to touch on three things that were excluded from Bill 99 that we're disappointed about. The first is a waiting period. So-called elimination periods are a common and necessary feature of disability insurance plans worldwide. The three-day waiting period was an important component of the Ontario government's

12-point plan for reforming the WCB in its election platform. Our members strongly supported, at the level of 81%, a waiting period. We are disappointed that Ontario did not follow the lead of New Brunswick and Nova Scotia and we continue to recommend re-establishing a waiting period in Ontario.

CFIB also supports the direct payment or deductible model in principle, based on our vote of exactly 50% of members in favour. We think it should be voluntary for all employers and that there should be choices respecting the deductible period, with adjustments to assessment rates accordingly. The direct payment model implementation would be an important first step towards having a private sector insurance option in workers' compensation, a concept supported by 75% of CFIB members in May 1996. In your kits you have that full vote with all the argumentation.

We're disappointed that the government is not proceeding with direct payment at this time. We would encourage policymakers to revisit this issue at an early date, as well as to canvass other means of injecting private sector competition into the government-operated monopoly that is the WCB.

CFIB is also disappointed that Bill 99 does not re-define "accident." We continue to advocate changes, and proposed language we are suggesting is appended to our Jackson submission. We commend it to your attention.

Now I'll turn to issues contained in Bill 99.

The section 40 duty to cooperate in return-to-work measures: We've seen an interpretation that this is a backdoor way of creating a re-employment obligation for small businesses sized under 20, which doesn't currently exist under section 41. If this is indeed the case, we would be disturbed, as the re-employment rights section has been administered in a very punitive manner towards business. We would argue strongly for removing the section 84 penalty related to that, as there is already plenty of exposure to experience-rating surcharges and the section 41 penalty in re-employment cases.

On the issue of part XII enforcement decisions, we strongly urge that the section 41 requirement to develop fair and reasonable policies on enforcement — in fact we've dubbed this a code of payroll taxpayer fairness — be applied across all the collection and enforcement measures and not just to selected ones and that appeal rights be maintained in this area. Our members have certainly experienced the board using its current powers in a very heavy-handed manner, so we believe a code of taxpayer fairness in this area would be very important.

In conclusion, CFIB appreciates the committee's consideration of our comments and concerns and we urge you to take them into account as you carry out your examination of Bill 99. Small and medium-sized firms are anticipating that Bill 99 amendments will take effect at the earliest possible date and provide positive results for the WCB system and Ontario generally. We believe this is belt-tightening with heart, and we encourage you to proceed.

**The Chair:** Thank you. We have six minutes to entertain questions, two minutes per caucus. We'll begin with the Liberal caucus.

**Mr Pat Hoy (Essex-Kent):** You cited that WCB shows up as 55.5% of concerns expressed by your membership. All governments are interested in job creation; they were in the past and they will continue to be in the future. I have had business people, small business predominantly, tell me that payroll taxes are a hindrance to job creation. Have you ever polled your members as to what job creation would flow from changes to WCB or any other, we'll call it, regulatory burden that may exist in Ontario now? Have they given you any opinion that perhaps someone who employs between 50 and 99 people may hire one or two more people if certain changes were made? Have you ever done a study like that?

**Ms Andrew:** We've done that type of study in connection with the employer health tax, which is also a payroll tax. It's obviously very difficult and sort of hypothetical: "If the rate went down, would you hire more people?" But we did get some interesting results which showed that the tax changes the government was proposing on employer health tax and on the personal income tax would yield employment. We're talking here about the sector that is the job-creating sector in the economy. That's certainly clear from all the data. I would be happy to give you a copy of that report I referenced on employer health tax and also some on job creation.

**Mr Brien Gray:** I think it's really important to emphasize that in Ontario, just as in Canada, firms of 20 employees and less represent 93% to 95% of all establishments in the economy. If you're talking about firms of 50 to 150, we're not talking about the majority. And there is an issue of ability to pay; the larger you get, your ability to pay is that much greater. In terms of effective tax rates out there, the smallest firms, despite the small business deduction, despite other so-called advantages, because they're either not in a profitable position or because they're not necessarily in a position to take advantage of a maze of tax credits or depreciation schedules, their effective rates are pretty darn high.

The fact is that any further advances in payroll taxes at both the federal and provincial levels will kill job creation. It will result in fewer jobs, we are convinced. We'd be glad to send the committee copies of our On Higher Ground study that we did last fall in response to Prime Minister Chrétien. It directly shows that if there's relief on the two issues you've raised, there will be a direct job creation contribution.

**Ms Andrew:** There are also quite a number of international studies on the issue of payroll taxes and jobs, and we can provide those.

**Mr Christopherson:** Thank you for your presentation. My question relates to your statement on page 3 that you want a fair system, fair for both employers and employees. I have some difficulty trying to find the fairness as it relates to injured workers. Injured workers are facing \$15 billion, collectively, being taken away from them, in that they're looking at a 5% reduction in their income when they're hurt on the job, through no fault of their own — they get 5% less income; they get 50% less money being put aside for a decent pension for them when their work life is concluded, when they're on long-term WCB; injured workers will not be allowed to claim for mental stress; and they're going to have limited



claim for chronic pain. Against that is the sight of employers getting in their pockets \$6 billion of that \$15 billion because premiums have been cut by 5%. It would seem to us that real fairness would not benefit directly, in cash, one party or the other.

In terms of injured workers — and please, let's not launch into the trickle-down theory — or healthy workers today who might be watching who could be injured on the job tomorrow or shortly down the road and be affected by this, where's the fairness for them?

**Ms Andrew:** First of all, the 85% rate: When you look at the fact that benefits are non-taxable in an injured worker's hands and you plot this on an actuarial chart, very many people end up taking more money home when they're on compensation than they did when they were working. We think that's a horrible signal to send to somebody, to make their choice to go back to work that difficult. Every international study shows that insurance plans can't overcompensate at more than 100% and be anywhere near financially viable, so the change from 90% to 85% will help deal with that overcompensation. The other way to do it is to make it taxable, but then you would have governments putting their hands in people's pockets more than they do now. That change is important.

On the pension issue you mentioned, there is an opportunity for the 5% set aside to be matched by the injured worker.

**Mr Christopherson:** Where do they get the money to do that? They've just had their income cut.

**Ms Andrew:** That's very equivalent to any kind of pension plan out there. This is still a generous provision, because it will actually confer pension plans where they didn't exist previously. In some cases an injured worker may not have had a pension at all at his or her place of employ; he would have now under the WCB, and his former co-workers won't have, so this is a generous provision.

**Mr Jim Brown (Scarborough West):** As a former small business person, manufacturing —

**Mr Patten:** You're not so small.

**Mr Jim Brown:** My company. I think you've been very polite on page 6 when you say that the WCB has unchecked power to behave badly. You've been very polite to the WCB. They're a bunch of tyrants and a bunch of autocrats. They beat up the little guy who's

providing employment, the 93% of Canadian establishments that employ under 20 people. It's the lifeblood of our economy and the WCB runs roughshod over them. When you say here, "We strongly urge that section 41" — can you just develop that a little bit more?

**Ms Andrew:** When we saw that the government was adding a couple of new enforcement powers to what we considered to be the already quite ample enforcement powers —

**Mr Jim Brown:** That's right. The only thing they don't take is your kids and your dog.

**Ms Andrew:** We encounter these cases through our member services departments, very heart-wrenching cases where they're attaching assets and ignoring mistakes they've made and doing all kinds of horrible things.

**Mr Jim Brown:** Do you have any estimate of how many jobs they destroy because of that?

**Ms Andrew:** We don't have an overall estimate. We usually try to intervene and solve these things before they drive the person right out of business. But they have done some awful things. They take years to correct a mistake. That's why we said at the beginning that it's not only the legislation but the administration that has to be fixed, and if there was a code of taxpayer fairness — Brien can talk about what happened with Revenue Canada.

**Mr Gray:** The concept was developed originally with Revenue Canada. You'll remember back to the late 1970s and early 1980s when it was absolutely running amok and out of control. I must say, if you were to ask most small business people today whether the cultural change towards the client-oriented focus, that didn't deal with only one client base but with all client bases — I think you'd find that most business people, although they're not overwhelmingly happy with Revenue Canada, they're a far cry more satisfied, and part of that is because of protections for those who use the system and have to deal with the system.

**The Chair:** I must interrupt, colleagues. Our time has expired. On behalf of the committee, may I thank you for taking the time to come before us at the end of the day. We appreciate your advice and your information.

Colleagues, those are our last presenters for the day. We will stand adjourned and reconvene on Monday the 23rd at 3:30.

*The committee adjourned at 1804.*











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#### **Substitutions present / Membres remplaçants présents:**

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Mr Jim	Brown (Scarborough West / — Ouest PC)
Mr Jack	Carroll (Chatham-Kent PC)
Mrs Margaret	Marland (Mississauga South / -Sud PC)
Ms Shelley	Martel (Sudbury East / -Est ND)
Mr Richard	Patten (Ottawa Centre / -Centre L)

#### **Also taking part / Autres participants et participantes:**

Mr Peter	Kormos (Welland-Thorold ND)
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**Staff / Personnel:** Ms Lorraine Luski, research officer, Legislative Research Service



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## **Legislative Assembly of Ontario**

First Session, 36th Parliament

## **Assemblée législative de l'Ontario**

Première session, 36<sup>e</sup> législature

# **Official Report of Debates (Hansard)**

**Monday 23 June 1997**

# **Journal des débats (Hansard)**

**Lundi 23 juin 1997**

**Standing committee on  
resources development**

**Comité permanent du  
développement des ressources**

**Workers' Compensation  
Reform Act, 1996**

**Loi de 1996 portant réforme  
de la Loi sur les accidents du travail**



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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
RESOURCES DEVELOPMENT

Monday 23 June 1997

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU  
DÉVELOPPEMENT DES RESSOURCES

Lundi 23 juin 1997

*The committee met at 1533 in room 151.*WORKERS' COMPENSATION REFORM ACT, 1996  
LOI DE 1996 PORTANT RÉFORME DE LA LOI  
SUR LES ACCIDENTS DU TRAVAIL

Consideration of Bill 99, An Act to secure the financial stability of the compensation system for injured workers, to promote the prevention of injury and disease in Ontario workplaces and to revise the Workers' Compensation Act and make related amendments to other Acts / Projet de loi 99, Loi assurant la stabilité financière du régime d'indemnisation des travailleurs blessés, favorisant la prévention des lésions et des maladies dans les lieux de travail en Ontario et révisant la Loi sur les accidents du travail et apportant des modifications connexes à d'autres lois.

ONTARIO LIQUOR BOARD  
EMPLOYEES' UNION

**The Vice-Chair (Mr Jerry J.Ouellette):** I call this afternoon's hearings to order. Just so people understand, this is a committee of the Legislature and, as such, we are governed by all the rules of the Legislature, and no demonstrations are allowed.

We'll call our first presenter to the table, Julia Noble from the Ontario Liquor Board Employees' Union. You have 20 minutes for your presentation to use as you see fit. If there's any time remaining, we'll allow for equal questioning from all three parties.

**Ms Julia Noble:** Good afternoon. Thanks for the opportunity to address you today. My name is Julia Noble. This is Heino Nielsen, my colleague from the Ontario Liquor Board Employees' Union. I am counsel to our union. We represent 5,000 people throughout Ontario.

Today I want to focus on two primary aspects of this bill that are of concern to our group. These are, first of all, the imposition of time limits on appeals and the written requirement that's being proposed; and second, the requirement that the appeals tribunal follow board policy.

With respect to time limits on appeals, as you will know, section 114 states that there is a time limit of six months with respect to most appeals, and that time limit does not exist right now. Bill 99 proposes an even shorter time limit for appeals where the issue is return to work. The bill also proposes that objections must be in writing. Those requirements are proposed to be in place both with respect to appeals to the board and appeals to the tribunal. We have concerns regarding these proposed amendments.

Time limits on these appeals to the board and the tribunal will have the effect of increasing litigation, in our view. This is a result which will be a burden to workers and employers alike. Why will time limits increase litigation? The reason is that all parties, if this amendment is passed, now will appeal every issue to preserve their appeal rights. Decisions made by the board often have many issues in them, and many decisions are frequently made by the board at the same time regarding a worker's situation.

Because the right to appeal any of these issues will be lost after six months from the decision, or 30 days in certain cases, employers and workers will have to appeal all the issues just to preserve their rights, otherwise their opportunity to dispute a decision of the board is lost and gone forever. For instance, the board could issue a decision that says that a particular worker has a permanent injury at a level of, let's say, 10%, that the worker has not been offered suitable work by the accident employer and that the worker is entitled to benefits for loss of earnings at a level of \$100 per month. Those are three separate issues, but they are related.

The worker or his representative probably will not have time to obtain the worker's file and review it and obtain any additional necessary medical information before six months have passed, so they will have to appeal this issue within the time limits and obtain the information later. The employer or employer's representative will also appeal the permanent impairment award within the time limits so that they don't lose their appeal rights, and they will also obtain and review their information later. In the meantime, the board is going to be processing both appeals.

The same holds true for the decision about suitable work. The employer will appeal this issue within the time limits, whether or not the employer is considering offering a different job to the worker, because they can't afford to let their time limits expire. Both parties will also appeal the issue of loss-of-earnings benefits at a level of \$100 a month so as not to lose their appeal rights. In short, whatever decision the board makes, both the worker and the employer will appeal it because they don't want to lose their appeal rights.

Under the current system with no time limits, parties have time to consider their positions and the medical evidence before deciding whether or not to appeal. This new system will be a strain on the resources of the board, on employers and on workers and their representatives, including offices of members of Parliament who, as we know, handle large workers' compensation caseloads.

Another reason that workers' representatives will feel pressure to file appeals regarding everything is that



worker reps will probably be liable for missed deadlines if an appeal is not filed within six months for a worker who has come to them for assistance. So if there's a file sitting in your caseload and you miss a time limit, you could be sued. The worry of lawsuits regarding negligence is something both worker and employer representatives will face under this amendment, so we're definitely not in favour of it.

Then there's the requirement for written appeals. The requirement for written appeals will also increase litigation, we believe. Most workers and small employers will feel the need to obtain representation to get assistance on a written appeal, thereby formalizing the appeal process and making it more litigious. There will be a strain placed on the resources of representatives such as the office of the worker adviser, the office of the employer adviser and MPPs' offices and other reps, as reps scramble to file written appeals within the six-month time period.

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Also, and I think this is important, the requirement for written appeals means people who have a limited working knowledge of the written English language will be at a serious disadvantage. I'd be interested in hearing what the committee thinks of that and if you've thought of any amendments in that respect.

The second major issue I want to talk to you about today with respect to this bill is the issue of the appeals tribunal and the fact that board policy is to be applied by the appeals tribunal. The bill proposes, "Where a board policy applies with respect to an appeal, the appeals tribunal shall apply the policy when making its decision." That is a very important change.

Right now there are two separate entities: There is the act and then there's the policy. Sometimes the act and the policy are in accordance with one another and sometimes they conflict. When they conflict, the way things are now the appeals tribunal makes a decision about that conflict because the appeals tribunal currently has the jurisdiction to ensure the act is enforced. After all, the act is what is drafted by the Legislature, not the policy.

Under the proposed change in Bill 99, the appeals tribunal could not enforce the act if there is a conflict between the act and the policy. Only the courts would be empowered to enforce the act pursuant to a judicial review of an appeals tribunal decision. For the lawyers in the group, I don't have to tell you that judicial review to the courts is costly and time-consuming, especially compared with the administrative process at the appeals tribunal. Yet this will be the route that employer and worker representatives will be forced to take, if this amendment goes through, in cases where the board policy conflicts with the act. We all know there are lots of cases where the board policy conflicts with the act.

There will be a high degree of success in judicial review when the grounds for the appeal to the court are that the decision-maker did not apply the act. So if the tribunal has to apply the policy, they're going to get judicially reviewed in court. What that means is that all the parties are now going to have to go to court in these cases. I'm talking about the employer, the worker, the board and the appeals tribunal. Everyone has to get

gowned, hire their lawyers and go to court, and that's going to happen a lot. I think that's a big waste of resources, the reason being that the appeals tribunal is there and it is a faster and more efficient way of resolving these matters.

I also wanted to make a comment to you about this process. I understand this committee has not scheduled presentations by any injured workers. I understand this is the case even though there have been over a thousand requests from injured workers to present. That surprises and worries us. We believe it's impossible to make important decisions about legislative change without hearing from one of the major groups that will be affected and impacted by the changes you're considering.

These people can give real-life examples you should consider and take into account. They're your constituents, they're your taxpayers, and as members of this committee you each have a big responsibility to consider everything before making a recommendation. So we think further dates should be scheduled so that you can hear from all the affected parties.

In the time I have remaining, rather than have you ask questions of me, because I think I've made my points clearly, and you may have heard my points before, I'd like to ask you some questions. I'd certainly be interested in your replies, especially from the members of the committee who sit for the government. The three questions are:

First, will the committee recommend removing time limits and the written requirement regarding appeals from Bill 99?

Second, why should the stakeholders be forced to proceed through the courts when the appeals tribunal can review policy quickly and cheaply?

Third, will the committee recommend setting further hearing dates to hear from injured workers?

I'd be very interested in your answers to those questions.

**The Vice-Chair:** The normal procedure, just so you understand, is that we go through each of the caucuses and allow them equal time. That gives us about three minutes and 20 seconds each. We'll start with the official opposition.

**Ms Noble:** I notice that we started late. Does that mean —

**The Vice-Chair:** No, your time is not affected at all by that.

**Mr Richard Patten (Ottawa Centre):** Thank you for your paper. It is very clear, by the way, and very succinct. I appreciate it very much. I also would like to hear the responses to your three questions. I think they're bang on and they should be answered over the course, and when we get to the government members — how much time do we have?

**The Vice-Chair:** You have a little over three minutes.

**Ms Noble:** Yes, perhaps we could hear from them on this. Thank you for your support.

**Mr Patten:** The other thing I wanted to say: On the injured workers' group, I asked the minister that question in the House last week and she avoided the question. I don't know why she does, because I think if invited to a meeting, and injured workers would consider doing

this — invite the minister and invite the committee members and see who comes — that might be an alternative way.

The question is related to time. I don't think I'm a cynical person, but it seems to me that many of these devices are designed to try to control costs, which is fair ball in some ways. But as you pointed out, and it's been pointed out by employers, pointed out by injured workers' groups, pointed out by almost everyone, the minister says she is prepared to revisit this particular piece, but I know that related to the time limits it's a very big issue.

What are you proposing in terms of time limits? That the existing situation remain as it is?

**Ms Noble:** That's correct. There are currently no time limits.

I'd actually like to hear on my questions from people who support the bill, maybe from the government side. I really appreciate your support.

**Mr Patten:** We go in rotation. We each have three or four minutes. That's the way it works.

I suppose what you're saying in terms of the issue of the tribunal and the board — and really they have two different functions. One has a policy function; the tribunal has to abide by the act. You're saying that if the tribunal has to live with a board policy that is in contravention of the act, this will lead to litigation.

**Ms Noble:** Absolutely. Litigation in the courts.

**Mr Patten:** We agree with you on that.

**Mr Mario Sergio (Yorkview):** I have a question.

**The Vice-Chair:** You have about 15 seconds left. Quickly.

**Mr Sergio:** On page 4, section (B), with respect to the language problem and the six months, stuff like that, what are some of the major concerns you see with respect to that particular clause?

**Ms Noble:** With respect to written appeals?

**Mr Sergio:** Yes.

**Ms Noble:** The concern is twofold. First of all, I think litigation will be increased because now everyone will feel they have to get a lawyer or a representative to even launch an appeal. I think that will formalize the process.

Second, and possibly even more important, it could completely cut off, effectively, the right to appeal for people who do not have a facility with the written English language. They may not even be able to really read and understand a complicated decision from the board, let alone try to appeal it in writing. I think that's an extremely huge problem.

**Mr Sergio:** I was leading to a second question, but the time is up.

**Mr David Christopherson (Hamilton Centre):** Thank you very much for your presentation. As you know, we have been pressing the minister in the House to extend the hearings. We've said that she has gone back on her commitment for full, province-wide public hearings. Four afternoons in Toronto and six measly days across the province is not keeping the commitment that both Minister Jackson and Minister Witmer made in terms of full, province-wide public hearings. We've even gone so far as to ask this committee on a number of occasions to unanimously recommend to the minister that she recon-

sider, use the strength of all three parties here — all of us are backbenchers — use that leverage to put pressure on the minister to honour her commitment to have decent hearings.

I once again, Chair, seek unanimous consent to introduce a motion that would allow this committee to recommend to the minister that she extend these hearings to honour her commitment and that she further hold a meeting big enough to accommodate all the injured workers who want and need and deserve to be heard. I ask the government members to give me unanimous consent to put that motion forward today.

**Ms Noble:** Sounds like a good idea.  
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**The Vice-Chair:** Mr Christopherson has the floor. He has the ability to move the motion. Is there unanimous consent? I hear a no.

**Mr Christopherson:** You heard the no from the government side again. I thought perhaps over the weekend some miraculous injection of fairness and democracy might have taken place, but it hasn't. Having heard Ms Noble a number of times ask for time for the government members to respond to her very legitimate questions, to assist her in what she is doing here today, Chair, I ask you to take the remainder of whatever time I have and add it to the government's side in the hope that they'll provide some decent, adequate answers to the questions this union is asking.

**Mr Sergio:** Can we have a recorded vote?

**The Vice-Chair:** A recorded vote wasn't asked for at the time. We'll clarify this at this time. When you have the floor, you have the ability to bring a motion forward. You don't need to ask for unanimous consent. But being that you asked for unanimous consent, that was what I called for.

**Mr Christopherson:** Oh, fine. The last time the ruling came, I needed unanimous consent and so I sought — but that may have been during the course of other proceedings.

**The Vice-Chair:** That was because it was on a point of order.

**Mr Christopherson:** All right. Then I'll properly put the motion as I stated it and I would ask that —

**Mr Ted Arnott (Wellington):** Mr Chair, on a point of order.

**Mr Christopherson:** Oh, get off it, Ted. I would ask that there be a recorded vote so that if you want to stand there and deny democracy, put it on the record.

**Mr Arnott:** On a point of order, Mr Chair: Did the member opposite not yield the floor to the government side?

**The Vice-Chair:** We hadn't called a member, so he still has the floor.

**Ms Noble:** I'd be interested in seeing how you vote.

**The Vice-Chair:** Can you properly bring the motion forward?

**Mr Christopherson:** I move that this committee recommend to the Minister of Labour that she extend the time being accorded for full, province-wide hearings so that we can get into enough communities to hear all the individuals and groups that want to be heard; and further, that there be a public meeting here in Toronto large



enough to accommodate all the injured workers who deserve and have the right to be heard.

*Interruption.*

**The Vice-Chair:** I would remind you that demonstrations are not allowed.

Now that you've called the motion, is there is any debate or discussion?

**Mr Arnott:** I'd like to speak to the motion. Mr Christopherson has moved this issue in a previous meeting of this committee I guess last week; I think it was on Monday. He has pointed out that it was I who — did he not, on a point of order?

**Clerk of the Committee (Ms Donna Bryce):** Perhaps I could clarify. Mr Christopherson tried to move the motion on a point of order. Members are not allowed to move motions on points of order. He asked for unanimous consent to move the motion. Unanimous consent was not given. Today he had the floor and he has moved the motion, so the motion was never actually moved until today.

**Mr Arnott:** Okay, I think the member also knows that it is the practice and the custom and the convention of the Legislature that public hearings time is determined by the three House leaders, and generally what happens is that the three House leaders come to some sort of an agreement.

**Mr Christopherson:** That's not what happened.

**Mr Arnott:** The House gives authorization to the committees to sit when the House is not in session, and there has to be a motion go through the House to allow the committees to sit, to give them specific direction to sit.

The member opposite says that's not what happened in this case, but I would like to ask a question of the clerk: Has there been a motion passed yet to determine the number of days the committee will sit when the House is not in session?

**Clerk of the Committee:** Yes.

**Mr Arnott:** So that motion has already been passed.

**Clerk of the Committee:** The time allocation motion allowed for six days during the recess.

**Mr Christopherson:** You rammed it through.

**Mr Arnott:** The fact is, the motion is passed so these days are now set.

**Mr Christopherson:** You rammed it through.

**Mr Arnott:** I don't think it would make much sense for us to at this point in time try to revisit that issue, because in reality it's not likely to change. On that basis, I'll be voting against Mr Christopherson's motion.

**Mr Sergio:** It's all fine and dandy that the Legislature has voted on it and the three House leaders have decided so at that particular time. We have, at this particular moment, a great demand. As we heard, there are more than 1,000 submissions from people who would like to make a deputation to our committee. I think it's quite appropriate and quite in order. This has been done before, where this committee has made a recommendation to go back to the House leaders.

The House sits until Thursday and there is plenty of time to have the accord and the approval of the House leaders and get the approval of the House today or tomorrow so this can be done. If the government side

wants to give the nod, there is plenty of opportunity to do it until Thursday. We are not rising until Thursday, so I think it would be quite appropriate and I'm going to support the motion.

**Mr Christopherson:** My viewpoint and reasons for putting the motion are clear. I won't use time to debate that again. But I want to take exception with what Mr Arnott has said. Quite frankly, I'm surprised. It's out of character for him to be so far off the way things really happen. There are two ways that committee gets set. One is a negotiated agreement where a number of bills are looked at, a number of needs by all three parties, and a deal is cut and arranged, where everybody got a little bit and gave a little bit, and it goes forward and we all own that.

That didn't happen in this case. There was absolutely no agreement. In fact, we fought you tooth and nail to provide decent time for hearings and honour your minister's commitment. You ignored my House leader, my leader and myself on this issue time and again and you rammed through your time allocation that gave only a measly six days. So get off it, Ted. You own this. It's your issue. You denied injured workers. At least have the guts to own up to it.

**The Vice-Chair:** I call the vote.

**Ayes**

Christopherson, Hoy, Patten, Sergio.

**Nays**

Arnott, Carroll, Fisher, Galt, Maves, O'Toole, Spina.

**The Vice-Chair:** I declare the motion defeated.  
Government members.

**Mr Bart Maves (Niagara Falls):** I'll go quickly. In the cases you handle of WCB recipients, how long does it take your average case to run the course and come to some sort of completion?

**Ms Noble:** It's hard to identify an average. It depends on what kind of a case you mean.

**Mr Maves:** Okay. What percentage of your cases get appealed?

**Ms Noble:** It's also hard to answer that, because if a case doesn't get appealed, people don't come to me for help.

**Mr Maves:** That's when you would get pulled into the situation.

**Ms Noble:** Right.

**Mr Maves:** My other question on that: How much time usually elapses before someone would come to you, then?

**Ms Noble:** That varies. You're wondering whether it would be within six months.

**Mr Maves:** Yes. There are time limits in other jurisdictions and there's quite a bit of complaint about time limits of handling a case, so I'm wondering.

**Ms Noble:** The problem is that under the proposed legislation, if for some reason — be it inability to clearly read English or the fact that someone is in the hospital or anything like that — the person misses their six-month appeal, the right to appeal is extinguished. That's the problem.

**Mr Maves:** Okay, and you can't give me any indication that if there were going to be time limits, you think six months is too short. Is there anything else that would be proper?

**Ms Noble:** Is there a better time limit?

**Mr Maves:** Yes. You've talked about time limits and removing them.

**Ms Noble:** The whole idea of a time limit does not fit the workers' compensation model, because what you have with workers' compensation is individuals who frequently are injured for life and issues come up that are ongoing for years.

**Mr Maves:** Thank you very much.

**Ms Noble:** What about my questions? Are you prepared to recommend removing the time limits?

**The Vice-Chair:** I'm sorry. We are well over time now. I thank you for your presentation.

**Ms Noble:** Are you over time because of the debate?

**The Vice-Chair:** There was 20 minutes allowed and we had used the full 20 minutes, plus the debate time.

**Ms Noble:** I don't think he had three minutes, though, did he?

**The Vice-Chair:** It was certainly three minutes. Thank you for your presentation.

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#### BUSINESS COUNCIL ON OCCUPATIONAL HEALTH AND SAFETY IN ONTARIO

**The Vice-Chair:** We'll call our next presenter, the Business Council on Occupational Health and Safety in Ontario, John Murphy.

**The Chair (Mrs Brenda Elliott):** Good afternoon. Welcome to the committee.

**Mr John Murphy:** Thank you and good afternoon. My name is John Murphy. I am the administrator of the Business Council on Occupational Health and Safety in Ontario. Joining me today is Rosa Fiorentino, who is employed by one of our member firms, Imperial Oil Ltd.

This is the first time our organization has made a submission of this nature before the committee, so I thought I would take the opportunity to tell you that the Business Council on Occupational Health and Safety in Ontario is a not-for-profit corporation that is comprised of 28 member employers who cover a diverse range of industry sectors and workplace sizes. I have enclosed as part of the submission an appendix which lists our members.

The organization was established in 1991 by its members to promote the adoption of governmental policy approaches that would more effectively protect worker health and safety while at the same time supporting economic competitiveness. With this mandate in mind, the business council has called since its inception for a variety of legislative and institutional reforms to try to create a province-wide strategy for achieving progressive reductions in accident rates.

In our prior submissions to this and previous governments, we have suggested that the key elements of this strategy would be as follows: first of all, the establishment of specific accident rate performance objectives; second, better systems province-wide for analysis of

accident trends for the purposes of identifying workplaces and sectors where prevention efforts might yield the greatest benefits; third, the development of targeted intervention plans reflecting the best available information on ways and means of reducing accident rates; and ongoing implementation of these activities through a coordinated institutional strategy.

We have said that to execute this strategy it would first be necessary to restructure and better coordinate the operations of Ontario's prevention system institutions, that is, the Ministry of Labour, the Workers' Compensation Board, the safe workplace associations and the funded agencies of the Workers' Compensation Board. The goal of the exercise would be to focus each organization on a core business that supported the performance improvement strategy.

We have also said it would be necessary to establish, by law or government policy, a system of incentives and disincentives to motivate performance improvement in workplaces in need of improvement. We have also argued for less regulation and a more flexible approach to compliance for workplaces having a history of good performance in combination with exceptional occupational health and safety programs. At the same time we have also called for stiffer enforcement and prosecution of bad actors.

We recognize that the government has accepted a need to refocus its resources within the prevention system in order to achieve progressive reductions in accident rates, and that this is critical to the future success of the workers' compensation system. We also recognize that a number of significant reforms have been launched to make this a reality and we are very supportive of these reforms to date.

Given that our organization's mandate is concerned with preventive aspects of occupational health and safety public policy and not with the insurance or administrative aspects of workers' compensation policy, our purpose today is to record our support for those portions of Bill 99 that are concerned with prevention system reform and to offer recommendations for further enhancements.

Our comments today relate to the following parts of the proposed Workplace Safety and Insurance Act: part II, "Injury and Disease Prevention"; part VII, "Employers and Their Obligations"; and part XIII, "Administration of the Act."

I begin with part II. We recognize that part II establishes a new prevention mandate for the Workplace Safety and Insurance Board and enables that board to carry out a variety of prevention-related functions. It also gives the board greater control over the existing safe workplace associations as well as other board-funded agencies.

As such, we believe part II will be supportive of the emergence of occupational health and safety public policies and administrative approaches that will reduce the rates and impacts of the more prevalent occupational injuries and illnesses that are problematic in Ontario. We also believe that this type of renewed focus is long overdue. In the past, it has been our observation that occupational health and safety policy and legislation in Ontario haven't really been formulated with these specific types



of improvements in mind. Similarly, resources for monitoring health and safety in the workplace and for compelling appropriate workplace prevention practices have not been deployed in a targeted manner.

It's our view that this problem has been due in part to a long-standing lack of policy level and operational coordination between the Workers' Compensation Board, the Ministry of Labour, the safe workplace associations and the funded agencies of the Workers' Compensation Board. Part II also provides a mandate for prevention driven by compensation experience and establishes some of the necessary mechanisms for better institutional coordination. For all these reasons we are strongly supportive of the provisions of part II.

Our comments in respect of part VII are limited to section 82. Section 82 empowers the board to establish experience and merit-rating programs to increase or decrease employer premiums based on the frequency of work injuries or accident costs or both.

We recognize the existence of similar provisions in the existing Workers' Compensation Act and we are aware that in recent years there has been considerable criticism of merit-rating programs due to their supposedly adverse economic impacts on the board, as well as concerns that such programs achieve their results by motivating employers to engage in inappropriate behaviours such as underreporting and coercion of employees.

This view, however, is at odds with the bulk of serious research on the topic. This including research in Ontario, supports the view that these programs promote progressive reduction in claims experience; yield long-term economic savings for the insurance carrier, in this case the Workers' Compensation Board, as well as the insured, in this case the employer; and do so, that is they achieve their outcomes, through better prevention and better claims management.

This is the case because experience rating works by providing an essential connection between accident prevention efforts at the workplace, or lack thereof, and costs of injuries and occupational illnesses. Experience rating makes workers' compensation a more controllable and more predictable cost of doing business and thereby creates an incentive for the firm to internally manage and reduce this cost through appropriate preventive and return-to-work measures. For these reasons, we consider it critical for the provisions to be preserved and enhanced in the proposed Workplace Safety and Insurance Act.

Turning finally to part XIII, our comments in respect of part XIII are limited to sections 155, 160 and 161, which pertain to the board's duties, methods of monitoring and mechanisms for accountability between the board and the minister. Again our comments are concerned principally with the prevention aspects of the bill.

We support the inclusion in section 155 of the existing statement of the duty of the board to perform the functions assigned to it by part II; the obligation placed on the board to evaluate the consequences of proposed changes in benefits, services, programs and policies; and the duty to monitor and reflect, through its services, programs and policies, new developments in the understanding of the relationship between work and the prevention of injury and occupational disease.

In the interests of greater coordination and accountability, we would also recommend two additional enhancements: First, we would propose in section 155 the inclusion of a duty on the board to prepare and make available for public examination any evaluation undertaken by the board in compliance with subsection 155(2).

Second, we would recommend the introduction in either section 155 or section 165 of a duty on the board to include within the board's annual report a discussion of its activities under subsection 155(3), and the manner by which the board has reflected new knowledge and understanding within its services, programs and policies, as well as in the performance of its functions under part II in respect of the prevention of injury and occupational disease.

We are supportive of sections 160 and 161 as mechanisms for affording greater policy level and operational coordination between the prevention-related activities of the board and the Ministry of Labour. In combination with sections 4, 6 and 7 in part II, these provisions go a significant distance towards creating a legislative structure for workplace prevention goal-setting, coordination and accountability within the province.

However, at present Bill 99 deals only with the roles of the board and, by extension, the subsidiary duties of the safe workplace associations. The bill does not, nor does any other statute at present, set out corresponding and complementary provisions relating to an overall strategy for the minister or for employers.

It's our view that a coordinated prevention strategy as per the type that Bill 99 is attempting to establish requires participation not only at the middle level of the system, that is the Workers' Compensation Board and the safe workplace associations, but also at the top of the system, by which we mean the Minister of Labour or the ministry, and at the bottom of the system, by which we mean workplaces.

In order to address this need we'd like to propose the addition of two new sections, either in the form of additions to the Workplace Safety and Insurance Act or, alternatively, in the form of amendments to the Occupational Health and Safety Act that would be given effect by section 2 of Bill 99.

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The first of these proposed additions is presented in appendix 2 to our submission. This proposed section would have the effect of requiring the minister and/or the board, depending upon the statute to which it was appended, to describe the state of the nation, as it were, of provincial occupational health and safety performance on an annual basis; set annual objectives for accident rate improvement to describe what the government and board has done to achieve this improvement; articulate plans for achieving these objectives in future; and state the rationale and justification for deciding upon the planned course of action.

Should this proposed section appear within the Occupational Health and Safety Act, it would establish a mechanism for accountability of the minister to the Legislative Assembly and thereby complement mechanisms in sections 160 and 161 of the proposed Workplace Safety and Insurance Act. In the alternative, if it were to

appear in the proposed Workplace Safety and Insurance Act, it would provide greater clarity with respect to the prevention functions and responsibilities of the board. Importantly, we believe this would also inject a greater degree of empiricism and rational decision-making into a policy-making process that has for too long been shaped, in our opinion, by competing political interests as opposed to the real needs of workers.

The second of these proposed additions is presented in appendix 3 to our submission. This proposed section would best appear as section 25a of the Occupational Health and Safety Act and, again, could be affected by amendments to section 2 of the bill. If adopted, this proposed section would have the effect of requiring most employers in the province who have unsatisfactory accident rates and/or severities and/or cost performance to undertake an annual analysis of their accident problems and formulate a strategy and plan to achieve specific performance improvements. The objectives of this section would be to impose a management approach to solving the problem of excessive accidents and to tie employers into the complementary strategic planning processes which will be undertaken by the board, the safe workplace associations and, we hope, at the level of the minister.

This concludes our submission. We would like to thank the committee and members for their time.

**The Chair:** Thank you very much for your presentation. We have just over six minutes remaining for questioning.

**Mr Christopherson:** Thank you, Mr Murphy, for your presentation. I want to ask you about your comment on page 3. If I can quote from your document, at the top of the page you state, "Given that the business council's mandate is concerned with preventive aspects of occupational health and safety public policy and not with the insurance or administrative aspects of workers' compensation policy, our purpose today is to record our support for those portions of Bill 99 that are concerned with prevention system reform, and to offer recommendations for further enhancements."

Unless I missed something, and I was looking at other documents because some thoughts were going through my mind as you were speaking, I didn't hear any reference to the Occupational Disease Panel. At 5:10 today we're going to hear from a representative of the Occupational Disease Panel. If you read through their document, certainly they've got an incredibly respectable, successful record of making a difference in terms of workplace health and safety illness prevention.

Given that, and given the absence of any comment here, I wondered how you felt about the idea that the Occupational Disease Panel as it now stands is being killed and folded into the WCB, where it's expected by everyone who has any knowledge of this panel's work to become — "less effective" is putting it too mildly; the difference between night and day. Given that you mentioned your mandate is prevention and that this is seen as a key component of preventing occupational disease and injury, I wondered how you felt about that part of Bill 99.

**Mr Murphy:** With respect to the characterization of the Occupational Disease Panel as having a preventive role, our observation would be that its principal role has really been in relation to compensation and benefits policy for occupational disease claimants as opposed to prevention per se. Apart from perhaps the influence of their background studies or research on specific toxic substances regulations, I can't really think of examples of where the panel has played a strongly preventive role, as opposed to a benefits policy role. As a result of that, that particular funded agency hasn't been a strong focus of our review in looking at Bill 99, so it would be difficult for me to specifically answer your question.

**Mr Christopherson:** I don't have a lot of time, but I would say very briefly that I think the impact here is that once claims have been legitimized and it has been determined and proven scientifically and medically that the resulting disease was caused by occupational exposure, as soon as employers are responsible for that exposure, prevention suddenly becomes a top priority because now you've made the proof, you've made the connection. I would offer to you that that's a direct result of the work the Occupational Disease Panel has done.

**Ms Rosa Fiorentino:** Can I just answer that, please?

**The Chair:** It will have to be very, very brief.

**Ms Fiorentino:** It's my understanding that the prevention role will continue under the board. We believe it could be done for less cost with the elimination of the added bureaucracy that existed with the Occupational Disease Panel.

**Mr Christopherson:** I hope you'll get a chance to stay and listen to their presentation, because I think you'll be surprised at what you hear in terms of the difference between how they're functioning now and what is likely to happen when they're killed and folded back into the WCB.

**Mr Maves:** Your suggestion under section 155 is basically in auditing. On page 6 of your presentation you're asking for more of an audit, "a duty on the board to include within the board's annual report a discussion of its activities." You're effectively saying you'd like to see more of an audit function done of the board's activities towards its goals.

**Mr Murphy:** I believe that's currently included in section 155. Let me refer you to section 155.

**Mr Maves:** Part of section 155 is an old duty to evaluate in the current act.

**Mr Murphy:** The suggestion we're making is that when the board conducts activities in compliance with its duties under section 155, specifically with respect to subsection 155(2), those evaluations would essentially be published and made available for examination, as opposed to simply being implicit in the overall policy process or operations of the board, so there is some audit trail and some system of evaluation and accountability in relation to the duty in subsection 155(2).

**Mr Jack Carroll (Chatham-Kent):** Thank you, Mr Murphy. As a representative of large, very successful companies, good citizens in the community, are accident and disease prevention and early return to work, first of all, important to your companies, and does Bill 99 help to promote positive movement in both those areas?



**Mr Murphy:** I think it's fair to say yes, they're definitely very important. We're very supportive of Bill 99 because it tends to remedy what we've seen as a number of institutional problems in prevention in the province. There has been a real problem, we would say, in terms of the lack of coordination between the policy and enforcement activities of the Ministry of Labour, the Workers' Compensation Board and the safe workplace associations and so on. In the province, you can look at the public accounts and the various sources and come up with approximately \$300 million in prevention spending every year in various ways. One of our concerns has been that we're not really seeing the sort of return we'd expect to see on \$300 million in public spending on prevention, that is, the administration of prevention.

To the extent that the bill strives for greater coordination among the various agencies and forces them to really sing from the same song sheet or follow a co-ordinated plan, we're hopeful it will make a positive difference in terms of the overall thrust and focus of prevention efforts in the province.

**Mr Sergio:** Thanks for the presentation. Just quickly, I wonder if you can expand on a couple of things which I didn't see too much of in your presentation: the right to representation and the time and location as well for appeals from the appeals tribunal.

**Mr Murphy:** We would consider those to fall within the insurance component of the bill. We didn't come here to speak to those aspects; we came to speak specifically to the prevention system aspects.

**Mr Sergio:** I think they go hand in hand. You're representing some 28 major companies. How would you see it on their behalf?

**Mr Murphy:** It's not really within our mandate to deal with the classical workers' compensation insurance aspects. Our mandate is concerned with prevention, so we're not here to speak about those issues.

**Mr Sergio:** You are not prepared to comment?

**Mr Murphy:** It's not even part of our discussion process.

**The Chair:** Mr Patten, very, very briefly.

**Mr Patten:** In a nutshell, you're very pleased and confident the board will develop this incredible prevention program. It just says what they might do, it doesn't say what they're doing, and I don't see any indications of any resources the board is putting towards the restructuring they've done even at the moment. I don't see where there's any encouragement, but you do. Is there any evidence of what the board has done so far that tells you they really are going to be serious about the prevention side?

**Mr Murphy:** Could you say that again? What's the question?

**Mr Patten:** I'm just asking, what evidence do you have that the board is really going to be serious about the prevention side?

**Mr Murphy:** I don't have any evidence. I don't run the board, so I can't speak to it. I guess we're encouraged by some of the internal reorganization that's taking place in terms of establishing a prevention division and at least creating the internal resources and infrastructure that will

be necessary to carry out the mandate. We're still in the early stages.

**The Chair:** With that, on behalf of the committee, I thank you both for coming this afternoon. We appreciate your advice.

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#### CANADIAN MENTAL HEALTH ASSOCIATION, ONTARIO DIVISION

**The Chair:** I'd now like to call upon representatives from the Canadian Mental Health Association, Ontario division, in particular Ruth Stoddart, John Kelly and Lisa McDonald.

**Mr John Kelly:** Good afternoon, everyone. My name is John Kelly. I am currently the past president of the board of directors of the Canadian Mental Health Association, Ontario division. I'd like to introduce to you Ms Ruth Stoddart, who is the manager of policy, planning and development, and Ms Lisa McDonald, who is currently the community mental health consultant at our provincial office.

The Canadian Mental Health Association, CMHA, Ontario division, is an incorporated, registered, non-profit charitable organization chartered in 1952. Over 4,000 volunteers are active in direct, board and committee service in a network of 36 branches located in communities throughout the province. Ontario division and branch services include education, advocacy and a range of direct services focused on persons with mental health problems and their families. Our organization receives funding from government grants, local United Ways and supplementary fund-raising activities.

CMHA, Ontario division, has had significant involvement with income maintenance issues as they impact on persons with mental health problems: consumers/survivors. We have, for example, developed policy positions regarding a variety of social assistance and employment issues.

With respect to workers' compensation in particular, we made a submission to the Royal Commission on Workers' Compensation regarding Ontario's system of workers' compensation in May 1995 and a submission to the Honourable Cameron Jackson, then minister without portfolio responsible for WCB reform, regarding the discussion paper *New Directions for Workers' Compensation Reform* in February 1996. Subsequent to our presentation to the Honourable Cameron Jackson, we were invited to submit our ideas regarding the possible linkages between workers' compensation and workplace health and safety issues, which we did in April 1996.

While the Canadian Mental Health Association, Ontario division, is pleased to have the opportunity to respond to the proposed Workplace Safety and Insurance Act, 1996, we are dismayed that all the issues and concerns raised in our previous submission must be reiterated. The concerns raised by our organization in previous consultations regarding workers' compensation reform are not addressed in the proposed new legislation, Bill 99. We will focus our submission on the issues most relevant to our area of expertise, that is, the compensability of psychological disabilities. I'll turn it over to Lisa.

**Ms Lisa McDonald:** The most serious concern of the CMHA, Ontario division, pertains to part III, section 12, of Bill 99, which sets out the circumstances in which workers are entitled to benefits for mental stress. Specifically, subsection (5) makes it clear that a worker is not entitled to benefits for mental stress under the insurance plan unless the mental stress "is an acute reaction to a sudden and unexpected traumatic event arising in the course of his or her employment." Further, a "worker is not entitled to benefits for mental stress caused by his or her employer's decisions or actions relating to the worker's employment, including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the employment."

Under existing legislation, a stress claim is a claim for workers' compensation based on a psychological disability caused by some stressful condition in the workplace. This is to be distinguished from those claims that are made for psychological disability caused by stressful conditions in the workplace which are ongoing and long-term. For example, the board currently compensates injured workers for psychological disability caused by a work-related physical injury, for example, an acute emotional reaction to an accident, the disability itself or the treatment of the physical disability; or psychological disability caused by an acute stressor that could be described as a "chance event." Here the connection to the workplace must be established and the stressor must be determined to be sudden, shocking and life-threatening.

The Workers' Compensation Board, as it currently operates, does not typically consider compensable chronic stress claims despite the fact that in community consultations regarding compensability it was generally agreed that the definition of disablement in the Workers' Compensation Act would allow compensation for such claims. Specifically, it was concluded that these claims could be considered to be disablement arising out of and in the course of employment under the definition of "accident," given that there is nothing in the act to suggest that personal injury can only be physical in nature and the definition of "accident" is sufficiently broad to include a condition that emerges gradually.

The introduction of Bill 99 would completely eliminate the possibility that chronic stress would be compensated under workers' compensation. Even though claims for compensation for psychological disability alone have not often been made in the existing system, because the board does not accept them, there have been a number of cases where psychological disability claimants who have been refused compensation have appealed the decision of the board and been granted compensation.

The first of these decisions was decision 918 of the Workers' Compensation Appeals Tribunal, which granted compensation for chronic stress. The CMHA, Ontario division, believes that such psychological stress claims should be treated in the same way as claims for physical disability. The proposed Workplace Safety and Insurance Act is in opposition to this direction. Under the proposed legislation, psychological disability claims not arising from a traumatic event are not to be considered at all.

We urge this committee once again to recognize chronic stress claims as included in the board's own

policy proposal. In reviewing a recent claim, the appeals tribunal stated that there were no statutory grounds to entitle an adjudicator to treat a stress claim differently from any other kind of claim heard by the Workers' Compensation Board.

We believe strongly in the need for legislation that accepts that workplace stressors can and do cause psychological disability. As long as this concept is ignored, most people who suffer from psychological disability directly related to stressors in the workplace will be forced to rely on unemployment insurance, social assistance, long-term disability insurance or other government-funded, disability-related programs. The result is that costs are simply transferred from one compensation system to another.

We recognize that in the current economic climate, government is attempting to contain costs of programs such as workers' compensation. However, we believe that limiting compensation claims to exclude those arising from workplace stressors is not appropriate. We stated in our 1996 submission regarding New Directions for Workers' Compensation Reform that we were particularly concerned about one approach discussed, which was allowing for the blanket exclusion of certain injuries or disabilities. It would seem that our concern was well founded, given that that is exactly what is being proposed in Bill 99 a little over a year later.

The CMHA, Ontario division, is very strongly opposed to the idea that government could discriminate in such a way with respect to certain disabilities in what we view as an attempt to increase the predictability of costs. This is especially inappropriate, given what is known about the relationship between workplace stress and disability. In a submission to the Workers' Compensation Board by the Ontario Psychological Association, it was noted that "there is a large body of scientific evidence to support the hypothesis that factors within the work environment, in interaction in an ongoing and dynamic manner with individual vulnerabilities, can directly impact upon and impair psychological functioning to the point of producing an identifiable disability."

The second area of concern regarding Bill 99 which we'd like to discuss today pertains to the prevention of disability resulting from workplace stress. While one of the stated purposes of Bill 99 is "[t]o promote health and safety in workplaces and to prevent and reduce the occurrence of workplace injuries and occupational diseases," it would appear that this does not include the promotion of mental health, nor the prevention of psychological disability arising from stressors in the workplace. This is very discouraging, given that a nationwide survey conducted by CMHA, national office, found that 60% of the workers studied reported they had experienced negative stress at work within the previous year, 35% reported adverse psychological effects and 11% reported adverse physical effects.

There is great potential for mental health promotion and prevention of psychological disability resulting from unhealthy work environments. One reason for this is that there is a great deal of literature describing the particular stressors in the workplace that may lead to disability. For example, factors such as time pressure, responsibility



without authority, negative work environment, job content, interpersonal conflicts, discrimination, harassment, relocation and lack of proper training and orientation have been shown to initiate stressful working conditions.

Just as employers are held responsible for rectifying conditions which lead to physical injury, so too should employers take steps to eliminate known workplace stressors. In a letter to the Honourable Cameron Jackson in April 1996, we argued that what is currently lacking are a broad-scope, systematic process and supporting structure to provide training to managers and workers concerning how workplace stress affects individuals and how these sources of stress can be reduced. We strongly recommended the development of such a comprehensive program and offered our assistance in the development of such a concept. The direction of the proposed legislation does not even acknowledge mental stress in the workplace except in the case of traumatic events, so it would seem that none of the suggestions of the CMHA, Ontario division, including those pertaining to mental health promotion and the reduction of workplace stressors, have been considered.

Nevertheless, we continue to recommend this proactive approach, which we believe would be beneficial to both employee and employer. It is acknowledged that employers are concerned about the rising costs of workers' compensation. During consultation of the WCB's Policy Proposal: Compensation for Disabilities Arising from Workplace Stressors, some employers felt that the inclusion of long-term stress claims as compensable would result in an overwhelming number of such claims being made. It should be recognized, however, that workplace stress is already costing employers in the form of reduced productivity and days lost for illness. It has been estimated that depression alone affects one in 10 employees in the US, and the cost to society and business is almost \$27 billion annually.

1630

**Ms Ruth Stoddart:** I'd like to speak a bit about people returning to work and rehabilitation of injured workers. The CMHA, Ontario division, has repeatedly said in submissions regarding workers' compensation and other pieces of legislation that many people with disabilities, including people with mental illnesses, want to work, but they face many barriers to employment that aren't experienced by the population at large. We have several concerns regarding this issue with Bill 99 and believe that any kind of rehabilitation system within workers' compensation should focus on assisting injured workers to return to work.

The first concern we have with Bill 99 has to do with the so-called labour market re-entry plans. These are stated in subsection 42(4), as providing "for such steps as may be required to enable the worker to re-enter the labour market and to reduce or eliminate his or her loss of earnings from the injury." To us, this seems merely an effort to reduce the amount of money that workers' comp is putting out, not any attempt at rehabilitating an injured worker.

The second concern we have with the labour market re-entry plans is that the board is to decide whether a

plan should be developed for a particular worker and it's only required to consult with a worker in preparing the plans. Our organization is very concerned about this, because conceivably a plan could be developed without any input at all from the worker and could end up being some sort of job re-entry or retraining plan which the worker is unwilling and/or unable to participate in.

Associated with this concern is the fact that we believe people need to recognize that situations exist where the workplace has actually caused a person's psychological disability and that any kind of return to the workplace is probably not the best option for that individual. In that case, we believe that a person should be prepared for some sort of alternative employment and/or should be provided accommodations while in the workplace.

In conclusion, I'd like to make three points. The first is the need for workers' comp legislation to include any kinds of psychological disabilities that arise from workplace stressors as legitimate claims. We're very concerned about the apparent discrimination in Bill 99 on the basis of type of disability. A recent case was decided by the Supreme Court of Canada, which was *Battlefords and District Co-operative Ltd v Gibbs*. It came out of Saskatchewan and had to do with a private insurance plan, and consequently the charter didn't apply to that case, but I think one of the statements made by the court is very applicable here. This had to do with a person who had a mental disability who had been denied compensation she would have received had her disability been physical. They were talking about the restrictions on the plan, and the court said: "...discontinues the benefits to the mentally disabled..., yet there is no such restriction on benefits available to the physically disabled. Consequently, the insurance plan provided by the appellant employer in the present case discriminates on the basis of disability."

The CMHA, Ontario division, believes that the proposed subsection 12(4) of Bill 99 will do exactly this by denying compensation for chronic stress claims and will probably be open to a fairly rapid charter challenge should Bill 99 proceed as it is.

Second, we'd like to emphasize the need for legislation to include both mental health promotion and prevention of stress-related psychological disabilities in the workplace; and finally, the need for a focus on rehabilitation between the workers' compensation system and the recognition that people both want to work and are willing to work.

**The Chair:** We have one minute per caucus remaining. Generally when we have such a short period of time remaining, we send it to one caucus only for questioning. In this case, it would go to the NDP caucus.

**Mr Christopherson:** Thank you very much for your submission. As you may know, we heard from ARCH last week, and they made an excellent presentation, hammering home the same message as you have.

I want to pick up on a couple of the comments you make on page 3, where you talk about the fact that workplace stressors can and do cause psychological disability. You also go on to say that those "who suffer from psychological disability" as a result of workplace stressors then go on to systems such as "unemployment

insurance, social assistance, long-term disability insurance or other government-funded" — I want to emphasize that point. Every one of those systems that people end up on if they can't qualify for WCB is paid for by taxpayers. One of the most important messages we have to get through during these hearings is that WCB is not taxpayer money, it's not taxpayer debt; it's debt that employers owe. These are premiums paid by employers because workers can't sue employers. That's crucial. People believe the unfunded liability is taxpayers' debt; it's not. When people don't get WCB, all the health care costs and support costs are on the part of the taxpayer, and the employers, who are responsible for WCB, don't pay. I appreciate your emphasizing that, because it's an important civics lesson for the public in terms of understanding the issues we are grappling with.

You talk about workplace stressors, and on page 4 you outline some of them in a very general way. Can you give a couple of regular, down-to-earth, everyday examples that anyone could run into that, if not stopped or corrected or checked, could lead to the kind of disability that would force one off the job through no fault of their own?

**Ms McDonald:** I will just say that I wouldn't want to identify one stressor that could lead to a particular psychological disability, because the research is quite complicated in that regard, but there is much research that indicates that those general ones we talked about are factors. There are many identifiable factors that we know contribute to psychological disability, those being some of them. Some of them are very specific: harassment on the job or working conditions being such that the person has little control over their environment, that kind of thing. Again, I wouldn't want to just tie a specific stressor to —

**Mr Christopherson:** No, I wasn't seeking to do that. I was just asking so that people watching, because this is being televised across the province, could understand one example of how ordinary working persons could find themselves facing workplace stressors to the point where they could cause a legitimate workplace disability claim. Pick any occupation and give me an example.

**Ms McDonald:** It can apply to any occupation; that's the first point. Let's take your job, for example, then.

**Mr Christopherson:** The Tories drive me crazy, so —

**Ms McDonald:** If you were experiencing a stressor that you could not get addressed in your job through the normal channels you would go to — I don't know what those are for you — and it continued to be a problem that wasn't addressed at your workplace, you could conceivably go on to develop a depression as a result of that. I'm not saying there may not already be a vulnerability to depression, let's say, but many of us have vulnerabilities to all kinds of disabilities. We may not express those because we're not exposed to the stressors that are necessary for them to become full-fledged. If it's not addressed and you continue to experience workplace stress, and you have to go to work every day, and you have to do that because you have to make a living, then that could conceivably lead, for example, to a depression.

**Mr Christopherson:** I appreciate very much your raising this, and I assure you we'll continue to raise it at

every opportunity across the province. Hopefully, maybe the government members will be listening and will recommend a change to the minister.

**The Chair:** That concludes the presentation time. Thank you, on behalf of the members of the committee, for taking the time to come this afternoon. We appreciate it.

1640

#### CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1750

**The Chair:** I'd like to call now on representatives from the Canadian Union of Public Employees, Local 1750, Mr Simourd and Mr Ryan. Welcome. You can begin at any time. You can introduce yourselves for Hansard if you wish.

**Mr Sid Ryan:** My name is Sid Ryan. I'm the president of CUPE Ontario. I'm here today with Paul Simourd, who is the president of Local 1750. Paul and I are sharing the presentation today because I'm one of the more than 1,200 applicants who have not been given an opportunity to make a presentation, even though CUPE is the largest union in this province, with 180,000 members, 3,500 of them in Local 1750.

Today I'm going to present one of the topic areas, and Paul, because of his expertise working at the Workers' Compensation Board, is going to give us the expert's opinion in terms of what's actually happening at the Workers' Compensation Board on a daily basis.

I'd like to deal with the issue of the requirement for workers to apply for compensation. That requirement will without question help make Ontario statistically safer, but this will only be because claims will be suppressed and hidden. Our union will do everything in its power to ensure that our members are not coerced into not filing a WCB claim when injured on the job, but it will undoubtedly happen to non-unionized workers who do not have the protection of a union.

When claims are not filed, employers save money, but workers and taxpayers lose. The workers don't get the compensation they deserve and taxpayers foot the bill for medical expenses and social services costs. Paul will give us some examples of how this will happen.

**Mr Paul Simourd:** As an employee of the board for the last 10 years, I have been faced with situations where myself and those people I've been training as adjudicators have had to deal with workers who have called the board saying that if they chose to claim workers' compensation, they would be fired.

I remember very well speaking to one young man who went on about the difficulty of getting a job. He told me very plainly: "If I claim, my employer will fire me. If I don't claim, the employer will allow me to claim unemployment insurance without objection." We discussed the situation for a while and I was able to tell him that if he didn't want to initiate the claim, he could have the claim initiated by his doctor and could claim that he didn't know anything about it because the doctor filed the form and initiated the claim.

Unfortunately, this appears not to be an option in Bill 99. Under Bill 99 in this provision, workers will suffer and taxpayers will have to pay for their suffering.



**Mr Ryan:** Dealing with the benefit indexing formula: Bill 99 will increase the financial distress of the families of injured workers through increased de-indexation under section 49 of the act. It is important to remember that workers are the breadwinners for their families, in many cases the only breadwinner. When workers lose the ability to earn full wages because of a workplace accident, it is not only they who suffer but also their families.

The erosion of indexation of benefits by Bill 99 will, slowly but surely, cause the families of those injured on the job to suffer. What is particularly distressing about this is that it will be a gradual, insidious process.

In the first year or two after an injury, the family will find itself possibly able to cope with the slight erosion of their income due to de-indexation. The loss of the extra 5% of net earnings caused by Bill 99 will take the blame for the family's change in circumstances. The full effects of de-indexation won't start to be felt for probably three or four years, when the family notices that despite learning to live with the original loss of earnings, they are having more and more trouble meeting their commitments. After 10 years, the loss to any family with a significant wage loss will likely be causing great distress. After 20 or 30 years, the effects could easily be the difference between being financially independent and requiring welfare.

**Mr Simourd:** The effect of this change really becomes clear when you put a human face to it. This is a face that may not be easy for people in this room to put on it; unfortunately, it's very easy for me. I remember all too well handling a case like this. As a pensions adjudicator at the board, I dealt with some very old claims: people who had been injured before regular indexation was part of the act.

The case I remember involved a family man who, despite a serious injury that ended in his being awarded a pension, a permanent disability award of approximately 60%, was able to return to work at a wage loss. Despite daily suffering, this man amazed his employer by continuing to work a modified job for over 25 years. Ultimately, he was unable to continue, and he came back to the board and went on full benefits. He started on vocational rehabilitation in an attempt to return to another suitable modified job, but he reached the point where he had returned to his pension level, his permanent disability level. At that point, the act called upon him to be paid based on his pre-injury earnings, which had not been fully indexed. For this man, it meant that his family income dropped from approximately \$2,600 per month to less than \$900 per month. As the pensions adjudicator handling the case, I was left to try to explain to this man and his wife that this was all the law allowed.

Bill 99 will help create many more Bobs, and the employees of the WCB I represent will be left to explain this family tragedy. No doubt some of these families will be the families of the workers we represent, workers injured while working for the new Workplace Safety and Insurance Board.

Ultimately, it's going to be the taxpayers of the province who will pay, because like Bob's family, they will be forced to rely on social assistance to live, assist-

ance paid for by taxpayers, not by the employers of the province.

**Mr Ryan:** I'd like to deal with the question of availability in section 43. Under the current act, when the WCB calculates a future economic loss award, it must consider what a worker could earn from suitable and available work. This means not only that the injured worker must be physically able to do the work, the job must also be available within the job search area. This provision removes the possibility of the WCB penalizing workers by deducting from their benefits earnings from phantom jobs that do not exist. Removing availability from the equation opens up the possibility of the board being criticized as completely unfair and reducing workers' benefits because of a job that does not even exist in a worker's area. Paul will give us an example of that.

**Mr Simourd:** Sitting here today, I'm not only a union representative but an administrator. There is no question in my mind that administering the proposed wording in Bill 99 would be much simpler for the board. Not having to prove or even consider whether a job is actually available will be much easier than the current requirements of the legislation.

The employees of the board, members of our local, are not just administrators, they are people. As I've told many people, the employees of the board are concerned members of the community. None of them enjoys seeing people suffer. Reducing workers' benefits is without question part of the job of a board employee; unfairly reducing workers' benefits is not. It's important to our members that the law they administer can be considered just. Removing the requirement for work to be both suitable and available before it can be used in a decision to reduce benefits will not be perceived as fair and will in the end be morally difficult to administer. If there are problems in administering payment of benefits, this isn't the way to fix them. We need fair legislation.

1650

**Mr Ryan:** We're going to deal with the issue of the privatization of voc rehab, probably the most important issue for CUPE members who work at the Workers' Compensation Board. Part V of the new act vaguely outlines how injured workers ought to be provided assistance returning to work, leaving most meaningful aspects of the application to the board. What is clear from this section and the reorganization going on at the Workers' Compensation Board is that the provision of vocational rehabilitation services is being privatized. Without a doubt our members are concerned about losing their jobs. The 424 voc rehab case workers at the board have been concerned about their ability to support themselves and their families since this legislation was introduced. They know that if they end up unemployed, no one will benefit.

What has also greatly concerned them is the unsubstantiated attack on their professionalism by the minister. We have heard her say that money spent on voc rehab has been wasted and their services described as ineffective. What we have not heard are any stats or tests that show private companies can do a better job than the public delivery of the service.

Paul wants to elaborate on what's going on at the Workers' Compensation Board respecting reorganization.

**Mr Simourd:** The case workers I represent want me to clearly state that they're proud of the job they do. They know they do the job as well as anyone or any company can, given the tools they have. Each and every case worker could provide the names and case histories of dozens, even hundreds, of workers and employers who are better off today because of the work done by them. Unfortunately, no one wants to hear about success stories when privatization is on the agenda.

Enough, though, about our personal concerns. I'd like to take a minute to look at it from the perspective of others. I'll begin with employers. This committee has already heard from employer groups who are concerned that they'll have to divert attention from their true business to vocational rehabilitation. This is particularly true for small business and medium-sized businesses. Employers will face additional costs for private companies doing the job the board case workers currently do. Employers face a potential of increased workplace conflict over return-to-work issues currently dealt with by independent board case workers.

I personally have been present when employers who are extremely happy with the service they're provided have told the chair of the board that they don't want to lose them. In fact, certain employers told me during a presentation of the chair's that I should be making sure to tell the chair that they didn't want to lose the valuable service we provide. I suggested that they speak to the chair personally to reinforce this message. The privatization of vocational rehabilitation is bad news for almost all employers in this province.

**Workers:** Workers need assistance in returning to work and they want that assistance to be independent from their employers. Nothing can replace the reassurance of having an unbiased party overseeing a return to work after an injury. Workers often see their employers as all-powerful and they can sometimes be coerced into returning to work too early. With current experience rating programs, it's an all-too-familiar story: The board employees are receiving calls earlier and earlier in the claims, often the first day that somebody is off, attempting to return somebody to work. Board-employed case workers can ensure that return to work occurs when it's supposed to.

Sometimes workers hesitant to return to work after an injury need a little push and some support to return to work. Independent board case workers can provide both, while an employer-paid company will always be seen as biased. Time and again, board case workers are called upon to arrange for return to work and their reassurance to injured workers aids employers in getting back to work. That reassurance is meaningful because they are independent.

Finally, the taxpayers: The Workers' Compensation Board is funded entirely by employers. Currently, no tax dollars go into the Workers' Compensation Board. If workers are forced off benefits because of information inaccurately provided by private rehabilitation companies or if their benefits are inappropriately reduced, the workers will be forced on to taxpayer-funded social

services. Usually this means unemployment insurance first and later welfare.

The entire change is based on the government's idea that workers and employers should more directly take responsibility for return to work. This is a good idea but it won't work. To prove it, you don't have to look any further than the board itself. Return to work at the board is most often a nightmare for both the employer and employees. This is despite union efforts to develop a return-to-work plan first jointly and then independently and provide it to our employer. It's also despite the efforts of certain of our executives who have recently renewed their commitment to develop an adequate return-to-work program.

The board prides itself on being a leader in health and safety, and yet we have difficulty with this issue with the staff we have and the skills they have. I want to make it clear that I don't raise this to embarrass the Workers' Compensation Board. I'm proud to work at the Workers' Compensation Board, but I raise it to illustrate that return to work is more complicated than it seems, and employers and workers in this province need further development before they're ready to handle it on their own.

Ontario needs independent vocational rehabilitation. We should stop the privatization.

**Mr Ryan:** I'd like to conclude by saying that clearly privatized vocational rehabilitation serves almost no one well in this province. I say "almost no one" because it does serve two groups well: (1) the large rehabilitation companies such as the ones controlled by insurance companies that desperately want a piece of the \$2.5-billion-per-year compensation system as well as a foot in the door for US-style managed care; and (2) large employers who can afford to pay private rehabilitation companies to force workers back to work too soon or to unsuitable jobs or who can find phantom jobs that no longer need to be available.

Clearly, I must ask the question: Is this another gift from the Harris government to its corporate friends? In our opinion, it's the beginning of the parcelling up of the Workers' Compensation Board to hand off to the huge multinational insurance companies. It is the end of an independent compensation system and the beginning of a private system where private companies profit from the personal tragedies of working people around this province.

With that, we'd like to conclude our presentation.

**The Chair:** Thank you very much. With the limited time remaining we'll only go to questions for the PC caucus.

**Mr John O'Toole (Durham East):** Thank you for your presentation today, Mr Simourd and Mr Ryan. From my world of work I'm questioning, and I suspect, the way you talked about your classifications at your place of work, that the return-to-work provision was a difficulty, an unsuccessful attempt at somehow finding — can you come up with any suggestions on improving? There's much evidence to support the fact that, I'm sure — you work in the field — the early return to work is preferable if you can solve the little problems. Is that your view as well, working in the field as a professional, that early return to work is part of the treatment itself?



**Mr Simourd:** I would say that early return to work is critical. It makes a big difference to the employer as well as to the workers of the province and we need to ensure they have the assistance necessary to make sure that happens.

**Mr O'Toole:** What do the workplace parties, that's the individual with the particular problem and also, if they're represented, the management — is there some formula that you think may work better than others? I'm thinking more of an industrial workplace where there's not a lot of differentiation between jobs. Quite often I found seniority was one of the problems. A lighter-duty job quite often represents a higher seniority. Is there anything that could be done there in a positive working relationship?

**Mr Simourd:** The board currently has modified work program specialists who get involved in negotiating return-to-work programs with employers and with the unions, oftentimes getting a commitment from both parties to make sure the return to work occurs successfully. We need to continue that type of initiative.

**Mr Maves:** Thank you both very much for your presentation. One of the comments made right at the end that caught my eye was, "Return to work is a nightmare for employers and employees currently." Then you said that before we get into the return-to-work system characterized by Bill 99, employers need further development. What type of development are you talking about?

1700

**Mr Simourd:** I think there should be further assistance, an additional opportunity for board staff to help create programs and perhaps initiatives that would assist employers further in developing sound return-to-work tools that serve both the employers and the injured workers well. I think that to make that happen, you need to have somebody who is perceived as unbiased who will, whether it's for a worker or an employer, argue to ensure that there is fairness and negotiate a fair return to work.

**Mr Maves:** With this new emphasis on return to work, is that not more likely to occur now at the WCB?

**Mr Simourd:** You say "new emphasis," and I certainly don't think there is really a new emphasis. I'm a training specialist at the board in my regular job. We have been training people for several years now to emphasize return to work from the first day. Virtually, an entitlement adjudicator who first receives the claim starts to consider return to work, and wherever there's a difficulty they hand it off to a professional case worker who gets involved to assist in that return to work. I wouldn't say it's new. It's been an initiative that's been pushed for some time at the board and is working quite satisfactorily, I think, for many employers.

**The Chair:** Thank you very much, gentlemen. On behalf of the members of the committee, we appreciate and thank you for your time this afternoon and your attention to this bill.

#### MEDICAL REFORM GROUP

**The Chair:** I'd like to call now upon a representative from the Medical Reform Group. Dr Ted Haines, welcome to the committee this afternoon.

**Dr Ted Haines:** The Medical Reform Group is a group of 200 doctors as well as medical students in

Ontario. If you want to know more about the Medical Reform Group, I'll tell you later.

We've been active on a number of health and social justice issues. I have some cue cards which are probably mainly for my benefit, but maybe I'll just show them around. In April 1996, the MRG wrote to Cam Jackson with our comments on developing compensation legislation, and then we wrote to the Minister of Labour in October 1996. Cam Jackson wrote us back a short, nice note that didn't really say much.

**Mr O'Toole:** Pardon me, Chair, is there a handout?

**The Chair:** Dr Haines, do you have a handout for the members of the committee?

**Dr Ted Haines:** I'll get to that in a second, if I may.

The minister wrote back to us in February this year. I have a copy of her letter for you as well as a copy of our correspondence to the minister and to Cam Jackson. She expressed her appreciation and she said that she took the liberty of forwarding our letter to Mr Michael O'Keefe, the president of the Workers' Compensation Board, for his information and she expected that the board would also be interested in our valuable suggestions regarding the return-to-work process.

In our letters to Cam Jackson and the minister we had said we had a lot of experience and would be quite glad to sit down and talk about how we thought the compensation system could be made more effective and how return to work could be made more effective. In her response she indicated that she had passed this on to Mr Michael O'Keefe. On June 12, Michael O'Keefe sent something to the stakeholders, which I received from another stakeholder on June 19, and today is June 23, therefore I do not have a handout. I don't consider that serious consultation with the Medical Reform Group. Now we're quite glad to continue working with you folks.

To get to some of the content of the proposed legislation, one of the points we've been making is that the minister and Cam Jackson talk a lot about prevention, but when you turn the bill upside down, sideways and back and forth, I can't find anything in it that talks specifically about concrete ways of reducing hazards in the workplace. Tell me if you can.

With respect to the impact on medical practice, it looks like nurse case managers are going to be telling doctors how to diagnose and treat. That's the way it appears. In our correspondence with the minister we pointed out a project funded by the Workers' Compensation Board called the Physician Education Project in Workplace Health. We had found, and this is no surprise, that with respect to dealing with workers' compensation problems in patients, doctors feel as if they have no skills, they feel inconvenienced, they feel ethically ill at ease, they don't know whom they're serving and they feel like they're spending too much time for too little bucks.

In the context of the various things that are happening in the doctor's office, I don't know that a lot of preparation is going on to help doctors help patients with work-related problems better. I don't get that impression at all. If nurse case managers are going to be telling doctors how to diagnose and treat, without some preparation for whatever advantages nurse case managers can offer,

they're not going to be happy. They're not happy already in many ways, as you know.

As of 1997, patients are going to have usual recovery times. This means that if you have a tennis elbow, you will have recovered, on average, by a certain date. It appears the Workers' Compensation Board is going to establish usual recovery times for Ontario over the course of the summer. Folks, this is very difficult to do.

Pam Hudak and Donald Cole, who work for the Institute for Work and Health, and I wrote a paper, and published last, year on prognosis in lateral elbow pain, most of which is tennis elbow and most of which is not caused by tennis. When you look at the quality of the papers, after you very thoroughly search the literature you find hardly any that are of good enough quality to analyse, and then you don't find very many that follow people up for very long.

A couple of weeks ago I was the tutor for family medicine for a North America-wide workshop held annually at McMaster called Evidence-Based Medicine. I'm a family doctor as well as a specialist in occupational medicine and also community medicine. They were here for a week. You may know that McMaster holds a certain expertise in this area. There are criteria for evaluating papers on recovery or prognosis and it's important that they be carefully followed. I don't know how the WCB can do that carefully for all the conditions of concern in a few weeks.

With respect to the business of function abilities evaluation, can doctors do it? Doctors do the best they can. We're asked to do it all the time. It's partly a problem that we don't have much experience, on average. We've never been taught, certainly not in medical school. The other part is, you can't tell that much from doing a history and physical examination. That's why occupational therapists are a very important part of the occupational health team.

1710

If we're asked, as it appears we're going to be asked, then the Medical Reform Group is going to advise doctors to bring their patients in. If they get a form in the mail, which I just saw last Friday for the first time, saying, "We want this filled out" — it comes to the employer — then if you're going to do any quality job, you're going to have to bring the patient in. In fact, it looks like Michael O'Keefe in his covering letter says that would be the ideal situation, as I understand it, so then Michael O'Keefe and we are in agreement. If it's a question of the family doctor documenting the functional abilities, then the doctor should bring the patient in.

There's been a murky area around consent on this, as we understand it. Doctors are very nervous about this. We don't want to consent to transfer of medical information to anybody other than the patient without very clear written consent. If we bring the patient in to fill out the form, we'll get it at that time. This brings up the question, if Michael O'Keefe and we are in agreement, then is this consent procedure that is proposed really necessary? It appears the worker is being asked to sign for the consent of that release of information at the very beginning of the claim. That seems to make a lot of people nervous. Do we really have to do that?

A couple of quick notes on evidence-based medicine: The first question is, are the recommendations valid? You determine that by following a number of rules, and it becomes a skill to do that. Then you determine whether the evidence is valid. That's what we taught family doctors and specialists from across North America how to teach this past week. There is one guideline on setting up practice guidelines. There are also guidelines for evaluating studies on prognosis, for example. I have five copies of this.

When you start talking about "usual recovery times" and the "typical" patient, you may run the risk of disregarding another important feature of evidence-based medicine. Not just (1) is the evidence provided valid, which is actually very challenging to determine; it's also, (2) will the recommendations help you in caring for your patients? This patient may not be a usual patient, may not be an average patient; it's the patient who is in front of you who needs help. It's not going to be very helpful for us to have cookie-cutter recommendations.

I also have an example of a bad practice guideline that one of the family doctors from Utah brought along and said, "Here's one we use at our hospital." It happens to be on how to evaluate infants with fever. Let's go through it. The group concluded it was a bad guideline. Let me tell you part of their methods.

"The first author selected an expert panel composed of senior full-time academic faculty with nationally recognized expertise in paediatrics and infectious diseases or emergency medicine. There was one meeting of the panel with the goal of reaching a consensus regarding answers to the questions concerning clinical treatment of febrile children. Before the meeting, each panel member was provided with a copy of the complete bibliography, the draft management algorithm, each clinical question, the evidence tables and selected references, and one or more suggested management strategies pertaining to each question. Each panel member was asked to review the material as well as any other information they might have pertaining to the questions of interest and to formulate an answer to each question before the panel meeting. At the time of the panel meeting, we attempted to reach a consensus regarding appropriate management strategies. When we could not, we proposed alternative management strategies. The draft practice guidelines were circulated in the form of a manuscript to all panel members for their review. The guidelines were revised and again circulated to the panel for comments, which were incorporated into the final practice guidelines."

A lot of experts got together, were circulated stuff, literature, got back together and stuff was revised. Point number one, they relied on consensus; point number two, in the actual recommendations that came out in that particular practice guideline they disregarded the evidence. It was another family doctor who pointed this out in our group.

Preparing practice guidelines is difficult. It takes time. I'm going to circulate that particular one for your consideration. I'll stop there.

**Mr O'Toole:** Thank you for a very interesting presentation. I gather from your presentation you are a medical doctor.



**Dr Haines:** I said I was a family physician, an occupational medicine specialist, clinical and a community medicine specialist.

**Mr O'Toole:** That's good. I'm kind of interested in the "functional abilities" comments you made. The form that was put out for everyone to see is this form here. That in your view is going to be what the employer receives, this "functional abilities" form, right?

**Dr Haines:** I got that on Thursday and I haven't had much chance to look at it, but it was my understanding that it would arrive in the family doctor's office, I'm not sure how.

**Mr O'Toole:** My point is that in the workplaces I'm familiar with today, it's quite common to get the workplace restrictions given to the management to make sure they try to accommodate the individual replacement, like no lifting over 30 pounds or overhead work. Do you think that in the return to work in section 5 — this is an important part — doctors like yourself who are trained as occupational specialists could be able to guide the safe return to work without it being medical information? I'm opposed to its being medically sensitive information, but I think the workplace parties need to know if there are weight restrictions, twisting, bending, lifting, all those kinds of things.

**Dr Haines:** Doctors have been involved in return-to-work situations and I think they probably should still be involved. They're generally trusted by their patients and I think they have a lot to offer. I think their role is being undermined somewhat at this stage. So yes, workplaces need good information on what workers can and can't do.

**Mr Carroll:** You made reference to the fact that you didn't see anything in this about prevention. Are you familiar with sections 6 and 7 of the act?

**Dr Haines:** Are you going to read them to me now?

**Mr Carroll:** No, I just asked you. You said you didn't see anything in here about prevention. I just wondered whether or not you'd read sections 6 and 7.

**Dr Haines:** Yes, I believe I have. Is there something I missed?

**Mr Carroll:** Section 6 deals specifically with the establishment of safe workplace associations, medical clinics, training centres and establishment of standards. Section 7 deals with them being funded by the board. I don't understand your comment about there being nothing in here about prevention.

**Dr Haines:** I'm talking about specific strategies to reduce hazards.

**Mr Carroll:** You don't believe these are?

**Dr Haines:** No, I don't.

**Mr Carroll:** Interesting. Thank you.

**Mr Pat Hoy (Essex-Kent):** Thank you for your presentation this afternoon. I too had noted a previous person who came here talking about usual recovery times and how that is going to happen here in Ontario. For instance I know of someone — it wasn't a workplace injury, but none the less in the hospital they said, "You'll be out Thursday," and they came out on Saturday. So it's hard to predict an individual's reaction to certain circumstances. I can understand that full well.

Would you say that these particular injuries that are causing one to perhaps not be able to continue to work

would be characterized as unusual rather than the usual type of injury you might see?

**Dr Haines:** Would you mind repeating that question, the last part?

**Mr Hoy:** Would you characterize the cases that may come to a physician or a family doctor like yourself as unusual by the fact that they can no longer go to work or feel that they cannot, and therefore it might be even more difficult to say what the "usual" recovery rate would be?

**Dr Haines:** In the literature on tennis elbow there are maybe three papers out of a hundred that have good enough methods for us to be able to say anything. One of them follows people for about 10 weeks and a couple follow them for longer. They have somewhat different methods, so when you start to look at the details of the literature, it's very poor. We don't have much sound information on which to base estimates of usual recovery. It so happens that people do vary in their times of recovery.

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**Mr Christopherson:** Thank you, doctor, for your presentation. Certainly I can appreciate your frustration at the lack of adequate time to give meaningful input. If it's any comfort at all, you're not alone. Just about everybody, other than friends of the government, who wants an opportunity to have meaningful input is not getting it.

I want to focus a little on the usual recovery time. You've put a great deal of emphasis on that and I appreciate that, because I think this is an important restriction that people need to understand. You made some reference to tennis elbow in terms of how different people can heal at different times. Would you be good enough to shift that over to any kind of a hypothetical work-related injury and what this kind of restriction could mean — in a worst-case scenario, I grant you — for a worker who might be watching this right now on the parliamentary channel and understands we're saying it's important but is having some trouble understanding the why of that.

**Dr Haines:** In what I got, there was a chart that listed some of the proposed usual recovery times. Neck strain might have been six weeks if you're going back to light work. I don't know where that came from, and the Medical Reform Group will insist on these being referenced and supported, but let's say it's six weeks.

My understanding, and I haven't had a chance to look at this for very long, is that if your problem lasts more than six weeks, then you're going to be referred to something called a pain management program. I think you'll get four weeks of that. Then — excuse me if I misunderstand this — if after four weeks you at that point have not recovered, you're out of there. You potentially have no more benefits and you're not back at work. That doesn't make clinical sense, based on the individual. That's the situation we're running into. We'll run into lots of situations where we know the person has a problem, yet they're not getting benefits and they're not back at work.

**Mr Christopherson:** They're not back at work because they're not physically able to perform the duties they're being offered, yet they've been cut off WCB, so from there they just start falling.

**Dr Haines:** Furthermore, they've been cut off treatment, it appears.

**The Chair:** Dr Haines, on behalf of the members of the committee, I thank you for taking the time to come before us and share your views this afternoon.

#### OCCUPATIONAL DISEASE PANEL

**The Chair:** I'd now like to call upon Nicolette Carlan, from the Occupational Disease Panel. Welcome to the committee.

**Ms Nicolette Carlan:** I hope to speak for about eight minutes and then have some time for questions from the members.

Thank you very much for giving me this opportunity to appear today. For the past six years I have been the chair of the Occupational Disease Panel, which will be eliminated by the passage of Bill 99. I come today to ask you to re-examine the evidence and the facts before you let this happen.

I would just refer to Dr Haines's comment about evidence-based medicine and I would hope that the government of the day is interested in evidence-based policy-making. We'll look at the evidence before they eliminate the Occupational Disease Panel.

I want to preface my remarks by saying that I'm speaking not only on behalf of myself but for all the members of the Occupational Disease Panel, members who have been appointed by cabinet to represent different industries, different geographic areas of the province as well as differing perspectives. Management, science, labour, medicine and law have all come together. We are all in agreement that the position of the government to eliminate the Occupational Disease Panel will not serve the people of Ontario, nor will it aid in the prevention of occupational disease, a much-emphasized goal of this government.

I'd also like to make it perfectly clear that the position taken by the panel members and myself cannot be dismissed as a self-serving position to save our own jobs. We all serve at the pleasure of the government, and the terms of all the members will expire either by January or early 1998. Having served for two or more terms, all the members expect not to be reappointed even if the panel were to continue, so there is no basis upon which to dismiss our arguments as self-serving.

During the first 50 years of its existence, the workers' compensation system in the province dabbled with the recognition of and compensation for occupational disease. The efforts by the board were limited by the state of knowledge of workplace exposures and diseases.

In the late 1960s and early 1970s, the whole issue of occupational disease came to a head because of the extremely high rates of cancer among the uranium miners in Elliot Lake. Some of you who were still in the House at that time will remember the work stoppages and the constant bombardment in the House of government members because of the perceived failure on the part of the government to protect workers and provide safe working conditions.

As a consequence of the uproar, the Progressive Conservative government of the day appointed Professor

James Ham to head a Royal Commission on the Health and Safety of Workers in Mines. The commission heard from 105 groups and individuals and made 117 recommendations. Running throughout those recommendations was the outstanding theme that occupational health and safety was a process in risk management that had to be shared by the workplace parties. To manage the health risk of workers, Professor Ham acknowledged that everyone, labour and management, had to know what the risks were and had to have some ability to control the environment to limit those risks.

In the next 10 years there were two other reports: the royal commission on asbestos and the Weiler report, *Protecting the Worker from Disability*. Both of these reports recommended the establishment of an independent Occupational Disease Panel.

Subsequently, the Liberal government appointed a tripartite task force to again examine the issue of occupational disease compensation and research in the province. That task force added its unanimous voice to the continued need for an independent Occupational Disease Panel. On that task force was a member from the Steelworkers, a professor of law representing employer interests and an independent professor of law from the University of Windsor.

On the basis of all these reports, the Progressive Conservative government set up the Industrial Disease Standards Panel, now the Occupational Disease Panel. The ODP has an annual budget of about \$1 million. The capitalized cost of a fatal claim for a young worker has been estimated to be between \$300,000 and \$400,000, depending on the age of the worker and the number of dependants. If the research done by the ODP saves only three lives a year it will have saved the system money, as well as saving the extraordinary human costs of a life shortened by occupational toxins.

In Canada, the conservative estimate of direct costs of cancer for 1993 was \$3.5 billion to the economy. In 1986, the only year for which these figures are available, the indirect costs of disability and premature death represented almost four times the direct costs of cancer claims. Assuming the same ratio would have existed in 1993, that means we have spent \$12.7 billion in the economy to deal with premature death and disability resulting from cancer.

Even if only 10% of that cancer is occupationally based, we're talking about \$1.2 billion in the economy. These costs to the economy and to the system will continue whether or not we recognize the occupational sources of disease. There is no question that there are occupational sources to cancer, and the only way we will eliminate any of these costs is to identify, recognize these occupational sources and eliminate them — \$1.2 billion to the economy.

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The panel has now been in existence for 11 years. During that time we've issued 17 reports of findings on subjects as varied as leukaemia among firefighters and scleroderma among silica-exposed workers. We've published an equal number of occupational and research papers. With the exception of two reports, one on scleroderma and one on aluminum presented to the board in



1992 — the board being the WCB — there has not been any action on any of the other reports. This is true for the previous bipartite board of directors at the WCB and it is equally true for the current WCB board of directors. There has been no action.

While the Ontario Workers' Compensation Board has never seemed to develop a mechanism for dealing with the ODP reports, the workplace parties and governments and courts in other jurisdictions have relied upon them. The work of the ODP has been requested or relied upon by the WCB in Newfoundland, the Supreme Court of British Columbia, the Home Office in Great Britain and the Workers' Compensation Board in the Australian state of Tasmania.

There is no doubt that the work of the ODP has been important in ensuring that workers be properly compensated, but the most important byproduct of the work of the ODP has been prevention. If you don't know the reason for the problem, you can't prevent it. The work of the panel has received international support and has enhanced the reputation of the government of Ontario in the field of occupational health and safety.

The position is clearly set out by Janie Gordon, chair of the occupational health and safety section of the American Public Health Association. This is an association in the United States which represents over 50,000 health care professionals, the vast majority being physicians. In her letter to the minister on behalf of the APHA, she wrote — and I have given copies to the clerk so you can have them:

"Our members, who are primarily based in North America, have long appreciated the contribution to the field made by the Ontario Occupational Disease Panel. Its tripartite approach to occupational health problem-solving, which includes employers, labour and government, has been a model throughout the world.

"The real opportunity for saving lives in occupational health lies in prevention. The Occupational Disease Panel has promoted prevention through conducting scientifically sound investigations and research. This work has benefited both labour and industry, not only in Ontario but throughout the world. Prevention and protection are obviously good for public health, but are also good for the business community and economic growth.

"There are a multitude of savings to a society which protects the health of its citizens, whether it be in the community or in the workplace. The membership of our section deeply respects and utilizes the work of the Occupational Disease Panel. We urge you to reconsider the elimination of this panel which has provided wide-reaching benefits to public health in North America and throughout the world."

Closer to home, Dr Jan Muller, a researcher for the Ontario government for decades who did ground-breaking work on the health effects of uranium mining, not only in Canada but also in his homeland of Czechoslovakia, wrote:

"Many thanks for sending me your report on stomach cancer in Ontario gold miners and your very kind letter. I sincerely hope that the WCB will act on your report and that the families of gold miners will receive compensation.

"I was deeply disturbed by your statement that the government has ordered the Occupational Disease Panel to cease operation as of December 31, 1996. Is this a way to create a good business environment, or do we want to transform the province into a developing country or a developing province?"

I have copies of that letter for everybody.

Added to this endorsement of the work of the ODP is the very hard evidence that the employer community in Ontario has taken steps to improve working conditions following the release of ODP reports. Following a research paper and prior to the issuance of its final report on laryngeal cancer and metal-working fluids, General Motors was retooling two of its plants in St Catharines. The corporation spent an additional \$1.7 million to eliminate and control oil mists as much as possible to prevent disease in the future.

In Timmins the firefighters, together with management, have taken steps to eliminate diesel emissions in the firehalls by venting their firehalls, at a very minimal cost, which I am sure will save a life.

Inco has agreed to invest a million dollars to study diesel fuels made from grains as an alternative to oil-based diesel fuels to protect the underground work environment. They've done that through the diesel emission evaluation program.

All of this activity has been prompted by the reports of the ODP which have identified elevated rates of disease in various working populations. The only body which has not acknowledged the work of the ODP is the Ontario WCB. While the government is committed to preventing workplace illness, how will this be accomplished if the WCB is again put in charge of research?

I would respectfully submit that there are two problems. In the first instance, there is absolutely no evidence that the board or the commission will do the job. In the 70 years before the panel was created, the WCB did not do the work. In the 12 years since the creation of the panel, under governments of all stripes, the board has continued to fail to be effective in this area.

Second, and probably even more important, there is an inherent conflict of interest, which was the basis for the establishment of the ODP in the first place. The WCB's core business is ensuring injured workers are compensated and that there are financial resources available to compensate workers justly entitled. Think about how willing a staff member of the WCB would be to present a document to her board of directors which indicates that welders are getting lung cancer at a rate 50% greater than the general population.

In that case, the expected compensation could be perhaps \$100 million to be paid out over 10 years. A corporate board which is struggling to get a handle on an unfunded liability would not be a receptive audience to these data, no matter how strong the scientific evidence was. The board will experience the same conflict when researchers request funding from the board for studies which have the potential to establish a serious health problem in one of the province's largest and perhaps most vulnerable industries.

You are being asked to endorse a decision to close an efficient and effective government agency which has contributed to improved working conditions in Ontario.

The need for such an agency has been identified by royal commissions, a tripartite task force and a government-commissioned review of the workers' compensation system. The agency you will be agreeing to close has been a leader in occupational health and has brought credit to the province of Ontario. You are also being asked to return the responsibility to the WCB, an agency which has never distinguished itself or even been effective in this area. That's what you are being asked to do.

There are alternatives to Bill 99. The ODP could continue to function as it does now and the WCB or the insurance commission could be required to respond and deal with the recommendations in a timely fashion. That's where the problem lies. An occupational disease secretariat could be established with administrative ties to the WCB but independent recommendatory powers. The details of this second recommendation are set out in our annual report, additional copies of which I have provided to the Chair.

Finally, it would be possible to integrate the ODP into the Institute for Work and Health, which would continue to allow for independent research in the province of Ontario. The decision to return research function directly to the WCB will benefit no one, in our view.

Thank you very much for your time. I would be glad to answer any questions.

**The Chair:** Thank you very much. We have just three minutes remaining, so we will give this period of questioning to the Liberal caucus.

**Mr Hoy:** Thank you very much for your presentation. You talked about saving three lives per year and what cost you can put on that, and everyone would agree that you can't put a cost on any of those lives. But your point is well taken that the work and the research that's done through the ODP is in the vein of saving lives or increasing the health and wellbeing of others.

You say there's been no action taken on reports by the WCB, in the main.

**Ms Carlan:** That's right.

**Mr Hoy:** Almost exclusively?

**Ms Carlan:** That's right.

**Mr Hoy:** I guess it really makes one wonder what the WCB would do if they had the sole responsibility for occupational health and diseases.

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**Ms Carlan:** I think the answer is quite clear. They haven't done very much. In the annual report, which I have provided to you, there's a time line of the diseases that were recognized prior to the inception of the Occupational Disease Panel and the WCB did virtually nothing for 70 years. Since 1985 there have been over 19 recommendations about diseases for which compensation should be payable and in the previous 50 years I think there were three conditions, one being asbestos, which received recognition throughout the world in the 1920s.

**Mr Hoy:** Do you see anything in Bill 99 that will compel the WCB to take on the role that the ODP previously has done? Are they compelled to do the work and the research that's taking place now?

**Ms Carlan:** They have the authority to do it. Are they compelled? I don't see that in the legislation, nor do I see any proactive role in preventing illness in this legislation.

**Mr Hoy:** In light of their past record, you would be very nervous about the fact that they're not compelled?

**Ms Carlan:** That's right. I think you make decisions about future activity on the basis of past practices, and if we look at the past practice, there's no reason to believe there will be a progressive or proactive role in this area by the WCB in the future.

**The Chair:** Ms Carlan, that concludes our time. Thank you very much. On behalf of the members of the committee, we appreciate you taking the time to come today.

## HUMAN RESOURCES PROFESSIONAL ASSOCIATION OF ONTARIO

**The Chair:** I'd like now to call upon representatives from the Human Resources Professional Association of Ontario, Mr Failes and Mr Clarke. Good afternoon, gentlemen, and welcome to the committee.

**Mr Mike Failes:** Thank you. With me today is Mr Ted Clarke. He's the vice-president, government affairs, for the HRPAO. I'm the chair of the provincial government affairs committee. My name is Mike Failes.

We are here today on behalf of approximately 7,500 members of our organization who are active in the human resources field in Ontario. These people are by and large the people who are asked on a day-to-day basis to administer the provisions of the Workers' Compensation Act as it now exists and, in particular, as I'll be emphasizing in a moment, are required to administer the return-to-work provisions of that legislation and the general return-to-work policies in their companies. It's important that when we are speaking today you keep in mind that we're here not as a group representing employers or a group representing workers but rather a group of people who are responsible for the administration of this legislation.

With that in mind, we'd like to focus on the area which concerns our members the most in their day-to-day activities and where they have the greatest amount of expertise and that's the return-to-work provisions found in Bill 99. In general, our membership supports overall reform of the legislation but this is the area that we'd like to make a few specific comments on.

For a number of years our organization has been advocating changes to the current act with respect to return to work. The primary concern we have is that the present act is fundamentally flawed in the way it was drafted. The best intentions simply did not get translated into good legislation. Everybody knew that early return to work was absolutely key in terms of both reducing costs for employers and, most important, in limiting the amount of time that workers were off work and giving them the greatest chance to get back to work. That, I would suggest, is absolutely undisputed. The problem was, the principle got enshrined without the tools necessary to carry it out.

We think there are three things that any good return-to-work legislation needs. One is provisions dealing with ensuring that good information is available, the second is ensuring that the information is exchanged between the people who need it and the third is that it's done in a timely way. The old legislation was completely inad-



equate in each of these three areas. We're pleased in general with the terms of the new legislation. We feel that each of these areas is addressed. We have a few comments that we'd like to make in terms of important aspects that you should retain and a few items we'd like to see refined.

Turning first to the quality of information, under the current legislation there is simply nothing there. The presumption was that somehow this information, something like manna from heaven, would flow into everybody's hands. Of course, the information didn't flow into everybody's hands. The result was that there were unnecessary roadblocks to workers getting back to work. It wasn't anyone's fault in particular; it just didn't happen because there were confidentiality obligations for the medical profession which had to be respected and which either impeded the flow of that information or stopped it entirely.

The crucial first week or two there would simply be nothing flowing to the employer. The old model was that doctors would simply certify that people were unable to work, and that was quite often absolutely correct, but it didn't address the real concern, which was, how can we get them back to work properly? Bill 99 goes a long way towards addressing that concern. Fundamental to that is the new functional needs assessment. That is the kind of tool our members need in order to get people back to work quickly and we support that very strongly in the legislation.

The second part that we think has to be there is the exchange of information between the parties involved. It's kind of like looking at a four-part process right now. There's the worker, there's the employer, there's the board and there's the health care professional. It's absolutely imperative that the information required to get the worker back to work — that is, the functional needs, what the worker can do — gets to all those parties as quickly as possible.

The old legislation, of course, didn't provide for the information to flow, much less how it would flow. The new legislation does that. There's one part that concerns us, though, and that is, to get the functional needs information back to the workplace and to get the worker back to work as a result, there has to be an obligation on every party to ensure that flow of information occurs: the worker and the health care practitioner as well as the employer. We'd like to see the legislation specifically address that.

What's more, we note in terms of the timeliness of getting that information back that right now, if you look at the legislation in section 43, there are all kinds of obligations with respect to providing information to the board promptly. When it comes down to providing the employer with functional abilities promptly, the section doesn't say that. There's no reference to the word "promptly" there. For some reason it has simply been omitted and we think that's probably the most important place for the timeliness to be emphasized.

One of the other provisions that we thought was very important in the legislation and we're pleased to see is the clarification of the six-month presumption, that if someone's employment is terminated, it's presumed to

have been contrary to the act. As many of you probably know, under the current legislation the board operational policy is that unless the employer can show that it was for just cause or would cause some undue financial hardship, that presumption would not be met and WCAT would on a regular basis overturn the board operational policy because it simply didn't make sense. We think the correct test is the test that's in there now and that is, was the employer motivated in any part by the fact the person is on compensation or has suffered injury at work? Clearly, if that's the case, then the presumption has not been rebutted. We strongly support the reform in that area.

There are a number of parts of this legislation that I want to just make sure we emphasize we want to see kept. That's one. A second one is, we think the key to this whole return-to-work provision is the requirement that the functional abilities assessment be done and be returned to the employer in a timely way. The third key element which we want to see retained is the joint obligation on workers and on the employer to cooperate in the return to work and the identification of modified work.

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Finally, we would like to see the current provisions with respect to penalties on both workers and employers retained. That leads me to two comments in terms of some of the submissions that have been made to you earlier. We know that some groups have suggested to you that the requirement to share functional abilities with the employer is somehow a breach of the confidentiality obligations. We'd say to you that's just absolutely incorrect to start with. Second, if you were to adopt that approach and say that's not acceptable, you may as well tell workers, "Sorry, we're not going to allow you to get back to work quickly; we're not going to do anything to assist in that."

We'd suggest if you really look at the information that's expected to be shared, it's not sensitive or confidential medical information, it's information about what a worker can do in the workplace. That's what our members want. We don't want to know what is wrong with the worker, the diagnosis. We want to know what the worker can do and what the expected duration of those limitations are. Surely, even if you were to characterize that as sensitive or confidential information, in light of the competing interest, which is getting people back to work quickly, it's more than justified that it should be shared.

The other comment we heard which concerns us was the suggestion that we should now remove the penalty provisions on employers that don't comply with the legislation. It seems to us that one of the flaws in the legislation as it existed was a lack of clarity about the stick, if you will, or the penalty being imposed on workers who didn't comply with the reinstatement obligation. It doesn't make any sense then to turn around and take that penalty away from the employer, who, after all, is largely in control of the process. We support maintaining a balanced approach to penalizing the parties who don't comply with the process. We think that balanced approach is seen in Bill 99 now.

In terms of the items that we ask that you consider some enhancements of, first of all, just a general comment that this will only work effectively if the board devotes sufficient resources to making it work effectively. Everybody knows if you don't get on this in the first five days, the game's half over. That goes for the WCB as well in terms of their case workers. If someone is not on these claims right away and monitoring the progress right away, it's still not going to work. Ideally, over the course of time as the system becomes more developed, the workplace parties will become more self-reliant, but certainly initially it's going to require a greater devotion of resources.

The specific items we'd like to see in addition in the legislation: First, as we indicated, we'd like to see a specific obligation on workers to cooperate with the health care practitioners and the employers in getting the functional needs assessment done and returned to the employer in a timely way. Second, we'd like to see in section 37 a specific obligation that the health care professional promptly provide the employer and the board with the worker's functional abilities. Finally, we'd like to see in section 43 an ability of the board to penalize workers who specifically fail to provide employers with the information that's required by the legislation. That's not specifically identified in section 43 right now. We think that should be worked into section 43.

Subject to your questions, those are our comments with respect to the return-to-work provisions and the association's thoughts on how the legislation can be improved.

**The Chair:** You've given us plenty of time for questions. We'll begin with the Liberal caucus, about three minutes per caucus.

**Mr Sergio:** Thanks for coming down and making a presentation to our committee today. You seem to have a problem with the existing law. As you said, it is currently very flawed. A couple of comments: Do you think the new, proposed law is more balanced? How would this new functional needs assessment work to create that balance, or will it not create any balance?

**Mr Failes:** Clearly, in light of the fact that we're in support of it, we think it will help. It's not so much create a balance in the case of functional needs assessment; it's give, in this case our association's members, the tools to carry out the purpose that's been in the legislation for a long time, which is of course to return workers to work quickly.

If our human resource practitioners don't know or don't have the information in hand to determine what a worker can do, it's impossible to determine whether they can do their pre-injury job, it's impossible to determine what modifications can be made to the pre-injury job. You've got to understand that right now what the worker comes back with from the doctor is, "Joe can't work; Joe can't perform his job." The doctor is at a tremendous disadvantage.

You ask any doctor — I know that Dr Haines was just here and I'm not sure if he commented on it; I wasn't in the room. Our association has certainly had many meetings with the OMA in the past. Doctors have told us time and time again, "Look, we don't know what's in the

workplace; we're not able to give some sort of generic note to the worker to deal with all the possible variables with modified work."

We see this legislation as an attempt to give the doctor something he can fill out which will allow him to provide an assessment of what the worker can do. It's then up to the employer to fit the worker into a job, that's where the employer's obligation comes in, and it's up to the worker to help the employer identify that job. That's the balance we see. But the tool we need is the functional limitations.

**Mr Sergio:** You mentioned a couple of times in your presentation penalizing workers who don't tell everything. What do you mean by that, penalizing workers who don't tell everything?

**Mr Failes:** I don't think I ever said we'd penalize a worker who didn't tell everything. I'm not sure a worker is in a position to know all of the things that have to be explained from a functional abilities perspective, for example, or that a worker is in a position to really assess all the aspects of modification of a job in the workplace. Those obligations are primarily going to lie with doctors and with employers, and those are the people who should be penalized if they don't comply with those obligations.

What the worker should be asked to do, though, is to ensure that he cooperates to the fullest extent possible in providing that information to the employer. I think virtually every worker is going to be more than happy to do that as long as they understand the ground rules, and the ground rules have to be, when we need a functional needs assessment done, you get into the doctor as quickly as you can and you cooperate in the medical assessment being done. I don't think there's going to be a problem with workers doing that, but it's got to be understood that it's an obligation.

**Mr Christopherson:** Thank you for your presentation. I think you can probably appreciate how nervous the average person is about the concept of being forced to release any medical information in order to qualify for WCB. Certainly as Canadians, I would think maybe even more than most around the world, we feel so strongly about medical information, and I don't think there's one of us in this room who's interested in having our personal medical records available in the public library. So the whole idea of being forced to give away some control over information about your own private health jars a lot of people, and I think we need to respect that fear people have.

Something crossed my mind. Because of the lateness of this arriving, I haven't had time — I don't usually ask a lot of questions I don't know the answers to, but I'm going to go out on a limb here this time. One of the things Mr O'Keefe said in his letter of June 12 when he sent out the draft was that the physical precautions do not include any confidential medical information. By that I would assume he means actual detailed blood sample reports or other such information he would call confidential.

What I'm concerned about here is that, for whatever reason, if an individual chooses to keep a certain medical condition private, which is their right as a citizen in a free country, the functional ability information could



indeed allow that to be made public to the employer. For instance, let's say they have a degenerative bone disease that is affecting their upper body strength. That doesn't affect their immediate job; therefore it's nobody's business but their own and their doctor's. That person has chosen, as a free citizen, to keep that information to themselves. This document, as I see it, could very well divulge to the employer personal medical information about their upper body strength that otherwise bore no resemblance or relationship to the work they were doing. What are your thoughts about that possibility?

**Mr Failes:** There are two things. First of all, the document, as I reviewed it and as I understand the purpose of the legislation, is not to divulge any confidential medical information in terms of the person's condition. That is, you would not put on that form, for example, "degenerative bone disease of the upper body." That's not accepted and I think you'll find, once you go back to Dr Haines's comments, that doctors are extremely sensitive about the release of medical information. I haven't seen the proposed release, but I would assume that it will specifically provide that you're only to give functional limitations and not provide any diagnosis or —

**Mr Christopherson:** May I interrupt you, because I don't have much time.

**Mr Failes:** Sure.

**Mr Christopherson:** I appreciate your response, but when I look at the form, and I have it in front of me, on the back it says, "repetitive neck movement, repetitive shoulder movement, heavy lifting." Again, by putting down that heavy lifting is a problem for me, where before lifting had nothing to do with it, you're now giving away medical information that otherwise I had at least the right to choose whether you would have it or not. Now I'm forced to give it away. I've lost a right that I had.

**Mr Failes:** What you're being forced to give up is not — you can say that broadly speaking it's medical information but what it is really is your physical limitations or abilities. Given the Human Rights Code obligations, never mind the workers' compensation just for a second, the employer has to have the functional abilities of a worker, if only to ensure they meet their accommodation duties under the code. More than that, they've got to have it in terms of their Occupational Health and Safety Act responsibilities to make sure the person doesn't get hurt.

**Mr Christopherson:** Fair enough, but I may be perfectly fit to perform the job that I am currently doing, but the job over here I've got some problems with. I would never bid on that job. If I got bumped down to it, I'd have a problem, I'd have to deal with it, but in terms of doing this job, I can do it. You now know I can't do that job.

**Mr Failes:** I'm with you now.

**Mr Christopherson:** You had no right to know that before.

**Mr Failes:** The simple answer to that one is there should be a space on the assessment form, if there is not already, which starts off at the very beginning, "Is there any problem with this worker performing his pre-injury

job?" If there's no problem with that, then we shouldn't be entering into this assessment anyway.

However, if the person can't do their pre-injury job, then the legislation says, and we think it's right, that the employer is under an obligation, with the worker, to find some other work in that workplace, if possible, and you can't do that unless you know all the person's limitations. So to the extent that you're saying yes, there is some divulging of private information, it's got to be more than met by the desirability of getting workers back in the workplace.

**Mr Christopherson:** I'll tell you, though, when it comes to putting that form in front of most Canadians and saying, "Here, give up any part of your personal health information," it really scares the hell out of them.

**The Chair:** I must interrupt. I do apologize. We'll move now to Mr Ouellette, please.

**Mr Jerry J. Ouellette (Oshawa):** A couple of quick points: First of all, you mentioned reporting to the employer. Under section 21, it says, "A worker shall file a claim as soon as possible after the accident that gives rise to the claim." As well, under section 20, "An employer shall notify the board within three days after learning of an accident." Do you think that is not adequate for what you're looking for?

**Mr Failes:** No. The next part we were concerned about is the obligation to provide the functional needs assessment promptly to the employer. That's different from the starting place criteria you've mentioned, filing the claim within the specified time and the employer notifying the board.

This is an additional area. If you look at, I believe it's subsection 37(3), where they list all of the obligations in section 37 to provide information promptly, you get down to the functional assessment, which is probably the one that is most time-sensitive, and for some unknown reason they don't have the word "promptly" in there. Why wouldn't they want that to be provided promptly? That's the one that everybody's waiting for to get the worker back to work.

There's a fundamental question at the beginning: Do you think it's important to get the worker back to work or not? If you don't think it's important, then you'll never agree with the legislation.

**Mr Ouellette:** I have another quick question for you as well.

**The Chair:** Very quick, and a quick answer, and then we're finished.

**Mr Ouellette:** This has come forward from a number of my constituents. When an individual is working, plays baseball on a baseball team and has a rotator cuff problem, should that problem be disclosed to the employer as well?

**Mr Christopherson:** That's my question.

**Mr Failes:** The fact that he has a baseball injury? No. But if we're now looking for modified work for this individual, it's not safe for that person to do work which involves raising his arm above shoulder height, yes, that is important because otherwise the employer, in fulfilling their obligation under the legislation, is not going to be aware they may be endangering the worker by putting

him in that job, which looks very light, putting things on a shelf, but in fact will disable the worker further.

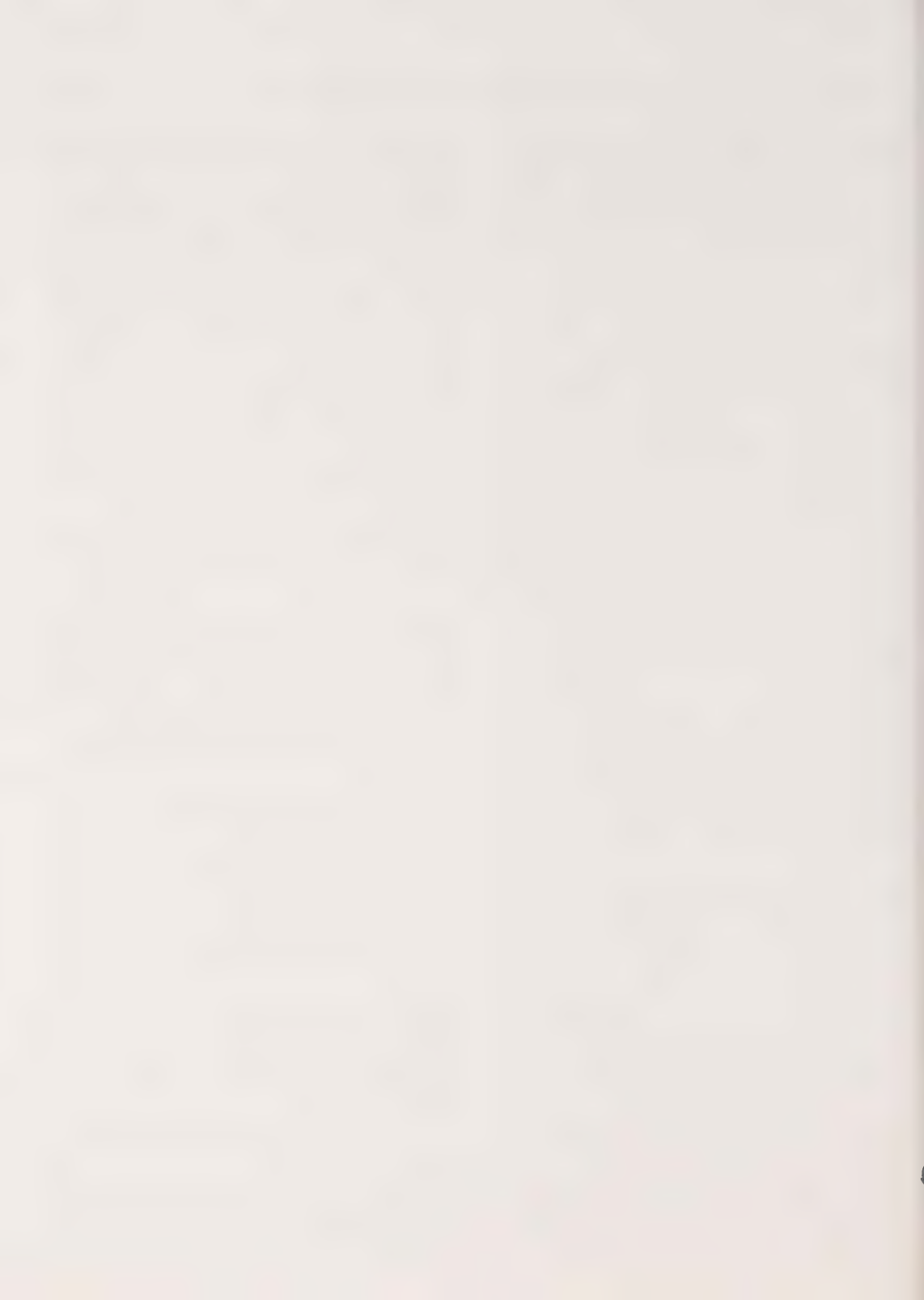
**Mr Christopherson:** But there's currently an ability for that person's personal doctor to say, "This is a problem for my patient." Also, this individual — I'm sorry to jump in — has lost their right to have control over that information.

**The Chair:** Gentlemen, I must interrupt. Thank you very much. On behalf of the members of the committee, we appreciate your taking the time to come this afternoon.

Colleagues, that concludes our last presentation. We will reconvene on Wednesday at 3:30. Thank you.

*The committee adjourned at 1805.*









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## Legislative Assembly of Ontario

First Session, 36th Parliament

## Assemblée législative de l'Ontario

Première session, 36<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 25 June 1997

# Journal des débats (Hansard)

Mercredi 25 juin 1997

**Standing committee on  
resources development**

**Comité permanent du  
développement des ressources**

**Workers' Compensation  
Reform Act, 1996**

**Loi de 1996 portant réforme  
de la Loi sur les accidents du travail**



Chair: Brenda Elliott  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
RESOURCES DEVELOPMENT

Wednesday 25 June 1997

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU  
DÉVELOPPEMENT DES RESSOURCES

Mercredi 25 juin 1997

*The committee met at 1636 in room 151.*

## WORKERS' COMPENSATION REFORM ACT, 1996

LOI DE 1996 PORTANT RÉFORME DE LA LOI  
SUR LES ACCIDENTS DU TRAVAIL

Consideration of Bill 99, An Act to secure the financial stability of the compensation system for injured workers, to promote the prevention of injury and disease in Ontario workplaces and to revise the Workers' Compensation Act and make related amendments to other Acts / Projet de loi 99, Loi assurant la stabilité financière du régime d'indemnisation des travailleurs blessés, favorisant la prévention des lésions et des maladies dans les lieux de travail en Ontario et révisant la Loi sur les accidents du travail et apportant des modifications connexes à d'autres lois.

**The Chair (Mrs Brenda Elliott):** Good afternoon, everyone. Our apologies for beginning late, but duties in the House required our attention at the first. This is our fourth hearing for the standing committee on resources development considering Bill 99, entitled the Workplace Safety and Insurance Act.

Our first order of business is dealing with the report before you of the subcommittee. Do I have a motion to adopt the subcommittee report?

**Mr Bart Maves (Niagara Falls):** I'll move the motion to adopt the subcommittee report.

**The Chair:** Any discussion?

**Mr Richard Patten (Ottawa Centre):** The only comment is that it's too long.

**The Chair:** Duly noted.

**Mr David Christopherson (Hamilton Centre):** My comment is that it's too short in terms of the amount of time, and I will again, when I am in a position to do so — if I can do it now while speaking to this, I will — move a motion. I seek your guidance, Chair, as to when it would be in order.

**The Chair:** Let's hear your motion.

**Mr Christopherson:** The motion is again to extend the hearings to allow all those presenters who wish an opportunity to be heard an opportunity to do so and, second, that there be at least one more meeting in Toronto in a room large enough to accommodate all these injured workers and other interested parties who would like to be there, to fit in rather than seeing them spill over into all the different rooms around the Legislature because we insist on meeting in this small room.

If I could speak to the motion and speak to the report at the same time in the interests of saving time, we had a subcommittee meeting earlier today and it was just totally inadequate to try to look at this entire province

and give proper respect to the democratic input that people are entitled to, especially given the attack they're facing in Bill 99.

This is woefully inadequate and does not offer nearly enough time. Six days in Ontario for Bill 99 is a slap in the face to injured workers and their representatives. On Bill 49, which the government itself said was a minor housekeeping bill, when we shamed them into it, they held four weeks of province-wide public hearings. On this, where the government made a commitment to have full province-wide public hearings, we got four half-days here in Toronto and a measly six days across the province. This is totally inadequate and is just more evidence of this government's desire to shut out the public, change the rules, ram through their legislation, and everybody else just be damned, and I'm opposed to it.

**The Chair:** So your motion is then?

**Mr Christopherson:** That we extend the hearings to allow all those people who would like to be heard an opportunity to do so, and that there be at least one more meeting in Toronto at a location large enough to accommodate all the injured workers and others who would like to be present at such a meeting.

**The Chair:** That will be, I guess, an amendment to the first motion. Any further discussion on that amendment?

**Ms Shelley Martel (Sudbury East):** I, along with my colleague from Welland-Thorold, spoke about this in the committee some two weeks ago when the larger committee had a chance to deal with the report from the subcommittee which dealt at that time with the Toronto hearings, the four half-day Toronto hearings, which are woefully inadequate to deal with a bill of this magnitude. At the time I made the points that I want to reinforce again today.

This Legislature has a long tradition of dealing in a fair and adequate way with respect to hearings when governments want to make changes to workers' compensation law. The government members have to remember that the decisions you are making with Bill 99 will have a dramatic, serious and long-lasting impact on thousands and thousands and thousands of injured workers in this province, on their families and on their ability to provide a livelihood for their families. This is an exceptionally important piece of business that we are dealing with. Every other government that has made major changes to workers' compensation legislation has at least had the decency to allow people who are concerned about legislation — injured workers, legal clinics, their advocates etc — to have some say, to have some input, to try and convince the government to make some positive change.

What the government is doing is an insult to people who are hurt when they work and make a contribution to



the Ontario economy. It's a slap in the face, because by the short time frame, the four half-days in Toronto and the six days on the road, you are very clearly signalling that you don't care what their opinions are and you don't care what they have to say. You've been given your marching orders from the Minister of Labour and you're going to carry your marching orders out. You don't care what people have to say and you sure don't want to hear about any amendments.

I urge the government members again to reconsider what you are doing. You are going down the wrong path in trying to limit injured workers and their representatives and employers and the public from having some say in a bill that will make such dramatic change to the lives of injured workers. Do the right thing. Extend the hearings to allow people who want to have a chance to have their say to have their say, and ensure that you have a meeting where injured workers in this city, and everywhere else they want to come from, will have a day to make their concerns about what they face every day when they're injured known directly to this committee. I urge you to do that.

**Mr Patten:** Keeping in mind that we do have some hearings to hear, I would like to support the motion. I believe, though, that procedurally—I don't know whether you said this to Mr Christopherson, whether the request was to request the House leaders to meet to do this, because I don't believe this committee has the power unto itself to make that decision. If that is in order, if you accept that as a friendly amendment—

**Mr Christopherson:** It would have to be in the way of a recommendation to the House leaders. The motion is that the hearings be extended and that would be the method.

**Mr Patten:** I would support that; my sentiments as well.

*Applause.*

**The Chair:** I will take a moment to caution the citizens who are here today. We are running very far behind because of requirements in the House. We are a standing committee of the Legislature. We must abide by the same rules with which the House operates and that includes no demonstrations from the audience. You are very welcome at these hearings but you must abide by the rules in the House, and that is, no applause, no demonstrations. We have a heavy agenda to go through and I ask your indulgence in that regard.

Are there any further comments on the amendment as proposed? Seeing none, I call a vote. All those in favour of the amendment as proposed? All those opposed? The amendment is lost.

*Interruption.*

**The Chair:** Order, please. Excuse me. Unless I have your cooperation in this regard, we will have to call a recess and the hearings cannot continue.

*Interruption.*

**The Chair:** Order, please. Unless I have your cooperation in this regard, the committee room will have to be cleared. No one in this room wants that, but you must allow us to conduct our business in an orderly fashion.

We return to the original motion. Is there any further discussion on the original motion? I call the vote.

**Mr Christopherson:** A recorded vote, please.

**Ayes**

Arnott, Carroll, Galt, Maves, O'Toole.

**Nays**

Christopherson, Patten.

**The Chair:** The motion carries. That means the subcommittee report is adopted.

## PROVINCIAL BUILDING AND CONSTRUCTION TRADES COUNCIL OF ONTARIO

**The Chair:** We move then to our presenters this afternoon. We'll begin with our first group of presenters, representatives from the Provincial Building and Construction Trades Council of Ontario, Mr Dillon, Mr Lolua and Mr Raso.

Gentlemen, on behalf of the members of the committee, we thank you for your patience in waiting. We apologize for being late but we appreciate your taking the time to be here. Your presentation time of 20 minutes begins now and you're welcome to introduce yourselves for Hansard.

**Mr Patrick Dillon:** My name is Patrick Dillon, business manager of the Provincial Building and Construction Trades Council. To my right is Jerry Raso, the legal counsel for the Ontario Sheet Metal Workers' and Roofers' Conference, and to my far right is Alex Lolua, government relations representative for the provincial building trades.

The Provincial Building and Construction Trades Council of Ontario is an umbrella organization representing 13 international unions, 130 affiliated local unions, with 100,000 unionized construction workers. I point out at this point in time that not only do we represent and speak for the 100,000 unionized construction workers in the province, we are also the only voice for all the construction workers who work in this province. There is no other organization that can speak for the non-union sector, so when we make our presentations, we do so with all the workers in the province in mind as we speak.

The construction industry is cyclical in nature in that it follows the business cycle. It is even referred to as pro-cyclical because construction tends to have a significant lag time to a change in the business cycle, but when it does react, it does so with greater intensity in either direction.

Construction is characterized by short-term employment, heavy physical labour, temporary job sites and numerous small employers. Unfortunately these key aspects which make construction unique have been virtually ignored by past governments in terms of workers' compensation legislation. It is our hope that these oversights of the past will not continue with the present government. I might point out that we understand the difference between what our hope is and what our expectations might be.

Although the committee is likely to hear the following message repeatedly, it is a very important one for all members to understand. Now, more than ever, we should

reflect upon the underlying principles which have led to the concept of workers' compensation:

Workers would relinquish the right to sue for workplace injuries and illnesses if employers would fund a no-fault compensation system;

Workers must be compensated for lost earnings as the result of work-related injuries and diseases;

Funding should be on a collective liability basis to protect small employers from the ruinous cost of an anomalous, single, serious accident.

It is important to keep these underlying principles in mind in any review of the workers' compensation system in this province.

On the issue of notice of accident: Presently, workers can start a claim by one of three persons notifying the Workers' Compensation Board: the worker, the employer or the worker's doctor. Under Bill 99, a claim can only be started by the worker filing a specific form. This is bureaucracy at its worst. There are many unanswered questions: Where does the worker get the form? What language will the form be in? Those types of things. There is also the issue of, if a worker is seriously injured and can't fill out a form, at what point in time does the claim actually get started?

I think everybody on the committee and the government needs to understand that workers aren't independently rich people. They're people who live from pay to pay and when they become injured it doesn't mean that they've given up all their financial responsibilities as a family. Waiting six weeks or eight weeks or 12 weeks — no way can an injured worker put up with that. They have enough stress in their life from the injury and the problems that has caused in their family life and personally without having to wait for funds.

1650

On the issue of the cut in compensation to 85% of net average earnings: One of the key changes proposed by Bill 99 is a cut in the rate by 5%. The provincial government justifies this cut by alleging that the 90% level encourages injured workers to stay off work since the worker may, in effect, have a full wage replacement, given the taxation treatment of benefits. As such, the government's reasoning is that if these benefits are cut by 5%, an injured worker may be encouraged to return to work sooner rather than later.

The problem with this reasoning is twofold: (1) It assumes that a worker would rather stay at home and receive WCB benefits than return to work if he or she is able to do so; (2) it assumes an injured worker has a great deal of control over when he or she is able to return to work. In my view, an injured worker, if they had their preference, would never be injured in the first place. We should really think about that when we're thinking about whether someone is cheating the system and all those types of things.

On another issue relating to this 5% cut, there has been a lot of talk about the unfunded liability of the Workers' Compensation Board and that somehow injured workers have a responsibility to that. I totally disagree with that. In fact, when you look at the cut of 5%, I find it's not a very principled position for the government to have taken, that injured workers should be cut by 5%, but at

the same time — and that's dealing with the unfunded liability, that somehow they have that responsibility — cutting the employers' premiums by 5%. If we were going to be principled about it and everybody was taking a cut, which would mean that the employer would have had an additional 5% premium, there might have been some balance that these people — injured workers and the labour movement — could understand. I really have some difficulty with just how principled or unprincipled that particular move was.

I'm going to turn to my friend Jerry Raso to continue.

**Mr Jerry Raso:** Continuing with what Mr Dillon was talking about in terms of cuts of benefits from 90% to 85%, I think a lot of people realize that is completely and totally unjust. But it gets worse than cutting to 85%. The way the bill is presently worded, partially disabled workers will not get a 5% cut, they'll get a 20% to 30% to 40% cut, because the bill says you get 85% of the difference between what you were earning in your pre-accident earnings and you deduct what you are able to earn in suitable employment. That means it's not a cut to 85%, because you're also deducting what you're deemed to be able to earn in some other employment. That is a dramatic change to the way the system is run now.

Presently, we have a two-stage system: temporary benefits and permanent benefits. People get temporary benefits for up to 18 months. If they're totally disabled, they get total benefits or, if they're partially disabled and they're cooperating in a return-to-work program with the accident employer or vocational rehab, they get 90% of their pre-injury earnings. The way the bill is worded, if a person is partially disabled three days after they get hurt but is not able to go back to their accident employer, they don't get 85%; they get 85% of the difference. So they're going to get a dramatic cut, and that's wrong.

We have met with Ministry of Labour officials who have assured us that is not the intent of the legislation, that temporary benefits were meant to continue for at least a period of 12 to 18 months while the person is attempting to get back to work. The question we have for this committee is: Will you amend the act and will you clarify it to ensure that at least for a temporary period injured workers will get full benefits while they're attempting to go back to work?

The second aspect in terms of compensation is section 43(5) of the act which deems that a worker's benefits can be cut to zero if they fail to cooperate with the board in any aspect, including return to work. Again, that's a dramatic change from what is happening now. Presently, if the board deems a worker to be uncooperative, they get their benefits cut to 50%. That too is wrong, but at least it's not zero; it's 50%. That will be devastating to workers if they get cut to zero.

I had a case of a man named Eugene Hoffbauer. He's a sheetmetal worker. He installs duct work. Duct work is filled with fibreglass insulation. He is allergic to fibreglass insulation. He couldn't do his job any more. He stopped working. He was on benefits for about two weeks. The employer notified the compensation board that they could give him modified work helping to build a building and assured the board there was no insulation onsite, which is absolutely ridiculous; new buildings are



full of insulation. The board accepted that this was true. He couldn't do it because he was allergic and he got cut to 50%. It took us a year and a half to get him back up to full benefits. Under Bill 99, this man would have been cut to zero and it would have taken him a year and a half to get his benefits back, and that is unjust.

We have been assured by Ministry of Labour officials that the intent is not to cut people to zero, that the system is supposed to stay the way it is now. So again we ask this committee and the government: Will you ensure that the bill will be amended to ensure that people will not be cut to zero?

The third aspect in terms of compensation is for both temporarily and permanently injured workers where, again, you get a deduction for what you are able to earn in suitable employment. The present act states there's a deduction for what you are able to earn in suitable and available employment. The concept is, if there's not a job out there that's available to you, you shouldn't have your benefits cut by that. Bill 99 has deleted the word "available," meaning if you're partially disabled you're not going to get full benefits at any time because they're going to deem you at least to be able to be a crossing guard or a parking lot attendant or something, regardless of whether that job exists or not.

Again we met with Ministry of Labour officials and asked, "Why did you take out the word 'available'?" They said: "The intention was not to do that. If there is no job available, if it doesn't at least potentially exist in the newspaper, we're not going to cut benefits by that." The problem is that the bill allows the board to deduct for jobs that do not exist. The ministry said, "That's not our intent," so we request assurance from this government that the bill will be amended and the word "available" will be put back into the act.

Another concern for construction is return to work. It's a massive problem, because of the nature of the construction industry being heavy labour, short-term projects, to get our workers back to work. Bill 99 continues an injustice against construction workers by exempting the duty to re-employ workers by two significant exemptions: First, it does not apply to companies that employ less than 20 workers; and second, it does not apply to workers who have been employed with a company for less than one year.

This goes completely against the construction industry. Our industry is characterized by small employers, the majority of whom have less than 20 employees. Our industry is characterized by workers going from job to job, from company to company. Those two exemptions exclude at least 75% to 80% of our members, and that's unjust. Our industry is united in recognizing that that is wrong. Both the provincial building trades and COCA, the Council of Construction Associations, agree that those exemptions should not apply to construction. Rather, both organizations which represent the trade, both labour and management, recognize and request that the bill be amended to exempt construction from those two exclusions.

Section 41(8) exempts certain sections of the act from applying to construction. The two organizations are requesting that subsections (1) and (2) be included in the

exemption clause, section 41(8). The other half of return to work for construction — we're happy to see that this bill at least recognizes that construction is unique, has its own special needs, and that the return-to-work provisions don't work for construction. Therefore, the bill provides that regulations will be written which will relate to the construction industry.

#### 1700

Again, COCA and the provincial building trades together request that the parties themselves write these regulations. With respect to the compensation board, they won't get it right, and both labour and management recognize this. Together we're asking that we be allowed to write the regulations. We're requesting that this committee make that recommendation.

There are a lot of issues we would like to cover, but since this presentation is so short and you don't allow representatives and people to make proper submissions, we've got one issue left, and that's the question of earnings bases. Clause 53(1)(b) states that earnings will be based on any pattern of employment that results in variations in workers' earnings.

At present workers get benefits based on their regular workweek. For organized workers, that's what's in our collective agreement, either 36 or 40 hours a week. This bill, by requiring the board to consider patterns of employment that result in variations, is going to be devastating for construction workers, because our work is not regular; it's cyclical. We've been in a very bad recession the last few years, and many of our workers have not worked. The way Bill 99 is written, our people will not get decent benefits.

In fact, the board has already begun to implement Bill 99 now. I had a case where a worker had not worked for a year and a half. He finally got a job. He went to a project in Windsor, which was expected to last six to nine months. Because he was not working the year and a half before he got injured, he received \$72 a week in benefits from the WCB, based on language such as this. That's not right.

With construction and other industries where work is irregular, what you're trying to do is predict what they would have been doing had they not been injured, and that's almost impossible to do. It's not right to base it on what you had just experienced. In this man's case, Mr Davidson, he got \$72 a week because he hadn't worked a year and a half, and then he gets hurt on the first day of his new project and he's punished because he had bad luck for a year and a half. This bill will continue that. It will be devastating for our workers, and again that's unjust.

I think we're over our time.

**The Chair:** No. You're all right. You have three minutes remaining, actually. You can have that time for questioning if you'd like, or presentation time.

**Mr Raso:** Sure, questions.

**The Chair:** As it's only three minutes, we'll go just to one caucus, and that will be to the official opposition.

**Mr Patten:** Thank you very much for your presentation, and thank you for being patient. Three minutes goes by very quickly, and I have about eight questions. I note some of the other comments in your brief that you didn't

address verbally today; there are some suggestions that look very constructive to me, if you'll pardon the pun.

The first question: You identified a difficulty in initiating a claim. The last issue you talked about was being seen essentially as seasonal workers, which I think is a really serious one, but what disturbs me even more is that you suggest that the board now, prior to the legislation, is implementing this already. If that's in effect, I would be interested to know that. I don't believe they should be implementing this at this particular time. I don't think they should implement it anyway. Your recommendation on that would be what, that there be an averaging of salary, or how would you establish it? There are fluctuations in the marketplace.

**Mr Raso:** That it would continue as in subsection 41(8) now, which states that it's based on the regular workweek of the worker.

**Mr Patten:** Right, on the hourly basis they have.

**Mr Raso:** The hourly basis now.

**Mr Patten:** You said the loss in compensation could be as high as not just the 85% factor, but the net difference between the pre-injury hourly rate — I'm trying to figure this out; I had a little model here. Let's say a worker is making \$20 an hour and gets injured, but can do some other things for, let's say, \$10 an hour. The difference is \$10 an hour. You're saying you apply the 85% factor to \$10, you add it together, and it's \$18.50.

**Mr Raso:** That's what he should be getting.

**Mr Patten:** That's what he should be getting? You're saying, though, that —

**Mr Raso:** Well, 90% is what the person should be getting, but 85%.

**Mr Patten:** Where you said this could be a great deal more than that factor, how would that work?

**Mr Raso:** If it was the way it is now but reduced from 90% to 85%, it would be 85% of basically \$20, and you factor in deductions for taxes etc; 85% of \$20 is, I don't know, about \$17. In Bill 99, the person will get 85% of \$20 minus \$10, which is \$10, so that person will get \$8.50 an hour.

**Mr Patten:** Deducting the new salary. You're right.

**Mr Raso:** The person's benefits will be cut in half.

**Mr Patten:** That's a big difference; a huge difference. You're saying that in your discussions the intent was not there. We'll certainly flag that for amendments when that comes up.

**Mr Raso:** Thank you.

**The Chair:** I must interrupt. I'm sorry.

**Mr Patten:** We'll be in touch with you on the other issues. Thank you very much.

**The Chair:** Thank you, gentlemen. On behalf of the committee, we thank you for taking the time to bring your presentation before us today.

#### ALLIANCE OF MANUFACTURERS AND EXPORTERS CANADA

**The Chair:** I now call upon representatives of the Alliance of Manufacturers and Exporters Canada. Welcome.

**Mr Ian Howcroft:** Good afternoon. My name is Ian Howcroft, and I am the director of human resources

policy at the Alliance of Manufacturers and Exporters Canada. With me is Rosa Fiorentino. She's the workers' compensation specialist with Imperial Oil, and she's also the chair of our workers' compensation committee. Also here this afternoon is Maria Marchese. She's on staff with the alliance; she's our workers' compensation policy adviser.

The alliance would like to thank the members of the standing committee for this opportunity to provide our comments on Bill 99, an act which introduces much-needed change and moves the system in the right direction. Before we provide substantive comments, I'd like to state a few important facts about the alliance and about manufacturing and exporting.

The alliance was created with the merger of the Canadian Manufacturers' Association and the Canadian Exporters' Association in May of last year. The alliance is a national voluntary organization with offices in all provinces. Our member companies produce approximately 75% of Ontario's manufactured output, and manufacturing represents about 80% of the total exports in Ontario. It's also interesting to note that the manufacturing class accounts for almost half the revenue assessments paid to the Workers' Compensation Board.

Over the last four years, exports in manufacturing have driven economic growth in Canada and in Ontario. Manufacturing directly accounts for 26% of Ontario's GDP. With respect to jobs, an important issue for all of us, approximately 19% of all jobs in Ontario are in direct manufacturing, 95% of which are on a full-time basis. Furthermore, between 1993 and 1996, the manufacturing sector has been responsible for 68% of the job growth in Ontario. These statistics clearly demonstrate the important contribution our members make to the province's economy.

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I would also like to take this opportunity to advise the committee that we have a long history of involvement in the areas of workers' compensation and health and safety. In fact, we have very active workers' compensation and occupational health and safety committees. Our committees have worked long and hard to provide input to the government to improve Ontario's health and safety system.

I'd now like to turn to the substantive issues dealt with in Bill 99.

First, I'd like to express our support for the government's new vision for accident prevention and the workers' compensation system in the province. We believe Bill 99 is an important first step in creating a more financially viable system, which will have as its cornerstone the heightened importance of accident and injury prevention.

Although we will be providing the committee with a full brief, we'd like to highlight some of those concerns this afternoon. I'd like to turn to Rosa Fiorentino to do that for us.

**Ms Rosa Fiorentino:** The bill proposes some very significant changes which the alliance is supportive of. These include:

An adjustment in the benefit levels from 90% of net average earnings to 85%. Although a modest adjustment,



it is our hope that this adjustment will be the first of many such steps towards achieving benefit levels which equitably compensate workers for wage loss but do not provide a disincentive for injured workers to return to the workplace.

The renaming of the Workers' Compensation Board to the Workplace Safety and Insurance Board. It is our hope that insurance principles will now begin to play a more prevalent role in the administration of the workers' compensation system and in focusing on safety and accident prevention.

The exclusion of benefits for mental stress. This major amendment is an important affirmation of the workers' compensation system's intent as an income replacement scheme for injuries or diseases directly and solely work-related. It is also a clear acknowledgment of the complexity and multifaceted nature of mental stress and the inability to clearly link such a condition solely to the workplace.

The new requirement for workers to file a claim for benefits as soon as possible after an injury and within six months. This important amendment introduces a new concept into the system by its intent that workers have both rights and obligations in the system, which will now be enshrined in law.

The requirement that workers consent to the disclosure to their employer of information provided by health professionals regarding their functional abilities. This is a long-overdue requirement and is vital to an early-return-to-work objective. The alliance has long advocated the need for such disclosure, and linking this disclosure to the receipt of benefits is critical to ensuring that the information is provided. The government in this respect must ensure that overlapping legislation governing health professionals is amended to ensure that such information is released and not stalled by conflicting issues around confidentiality.

As a side comment, we have just recently received the WCB's draft version of the functional abilities evaluation form. From our preliminary review of it, we can say we do not believe it satisfies the intent of the bill or employer needs, with its focus on restrictions rather than functional abilities. It is crucial that we are able to understand and know what exactly the worker can do in order to fit him into the workplace and protect the worker from other injuries.

The requirement that workers must cooperate in the health care measures that the board considers appropriate. This new requirement is again an important acknowledgment that the workers' compensation system is not simply intended to pay benefits but also requires the worker to participate in achieving the objective of reaching maximum medical recovery.

A new requirement for workers to cooperate in the return-to-work process. This obligation requiring workers to cooperate in the return-to-work process introduces long-needed balance to the system in achieving return-to-work objectives that can only be achieved through the cooperation of all parties. The newly introduced provisions regarding the concept of worker responsibilities, with associated penalties for non-compliance, are also vital to the return-to-work process. These provisions,

however, must be amended to ensure that definition problems will not prevent the true goal of return to work from being achieved.

The bill also proposes new directions in the following areas which, although they may have merit and are positive initiatives necessary for restoring the system to its original intent as a workplace insurance scheme, are ambiguous and require clarification, along with more specific direction for the board's implementation:

Labour market re-entry. Much clarification, in our view, is needed in the area of the concept of labour market re-entry and the establishment of a labour market re-entry plan in particular.

The section as written, and without clear parameters on time frames for completion of a plan and objectives of the plan, will perpetuate the problems which exist currently with vocational rehabilitation plans in their seeming endlessness. Also of concern is the possibility that such plans would be used as a fallback during bad economic conditions.

We believe the provisions are intended to address those cases where an injured worker could not return to the accident employer. However, we believe the intent of the section should be to provide a worker with the tools to make them labour-market-ready, and it should not be the objective of these provisions to secure the employment for the worker. The objective of labour market readiness, not employment, must be clearly articulated in the statute. We strongly recommend that those provisions be amended to clearly articulate the stated objective of market readiness only, and not employment.

New loss-of-earnings provisions. From our reading of these provisions, it would appear that the concept of payments based on level of disability is being replaced by that of simple income loss. The concept poses concerns for us in the lack of clarity of the provisions, which in our view leave too much discretion to the board's administration and policymakers. We are also concerned that this may result in overcompensation, rather than appropriate compensation, by utilizing the loss-of-earnings notion as the determining factor for benefits.

Loss of retirement income provisions. Although amended from the current legislation, it continues to be our view that this provision may contribute to overcompensation by providing a benefit which may not have existed prior to the accident. Although such benefits would be appropriate in cases where a pension plan formed part of the employment benefits, they would be inappropriately extended where no such benefits existed prior to the accident. Furthermore, Bill 99 appears to go further, in overcompensating workers by expanding on the group which will receive this benefit by setting out, as its new criterion for receipt, a loss-of-earnings period of 12 continuous months only. This period is much too short a time frame, the result of which may be a greatly expanded group of recipients.

New indexation provisions. We agree that this provision is an important step in efforts to reduce, with the view of eliminating, the unfunded liability. We maintain, however, that this provision must go further in reducing costs by limiting even further the number of exceptions to the new indexation provisions. The exceptions noted

are too broad and should only include those with 100% permanent impairment and survivors.

New revenue reporting obligations for employers. Aimed at reducing and eliminating revenue leakage, these provisions may well have merit in helping to reduce revenue leakage at the board and in attaining financial stability for the system. We wish, however, to caution against what has happened in the past, where board policies exist for collections of unpaid assessments but are not followed by board personnel, with the unfortunate result of bankrupting employers without having given them appropriate notice prior to seizing assets. Again, this is an area where we are primarily concerned with the broad powers being given to the board for implementing and administering these provisions.

New provisions regarding decisions of the board and appeals. We welcome specifically the new time frames within which board decisions may be appealed. These steps are important in achieving a more expedient administration of the workers' compensation system in that reviews will not be drawn out due to extensive information-gathering spanning months or years. However, less discretion should be given to the board to consider exceptions to the new time frames and allow for late appeals. It is our concern that the exceptions rule will become the operating policy for appeals. The less discretion given to the board to allow for exceptions, the less likely that exceptions become the rule.

**The Chair:** I'm sorry to interrupt, but I must caution you that you have about one minute left to wrap up.

**Ms Fiorentino:** Appeals tribunal: The new jurisdictional limits of the appeals tribunal, particularly in the area of policy development, are important in moving towards a system which ensures that the board is the sole policy arm for legislative administration of the workers' compensation system and that the appeals tribunal is bound by board policy. It continues to be our view that the appeals tribunal should not set board policy. It is also our strongly held view that there should not exist or be allowed to exist a void in policy development at the board. The bill does not go far enough in limiting the tribunal's power to develop policy in its provision allowing it to render decisions in the absence of board policy.

The Legislature must enshrine into law not only the limited scope of power for the tribunal as an auditing body of board policy, but also enshrine the obligations of the board to ensure that when a vacuum in policy exists, it be corrected at once with the development of a policy.

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**The Chair:** Excuse me. I'm going to interrupt again. It was my error; you do have time to continue, so please do so. I apologize for upsetting you.

**Mr Howcroft:** I was checking my watch.

**Ms Fiorentino:** The bill requires some fine-tuning to ensure that a process is spelled out which will ensure that in the absence of a policy, the board will be required to promptly respond to a void, or clarification of policy, as identified by the appeals tribunal prior to a decision being rendered. The tribunal must continue to be bound by the final decision or confirmation the board provides. A policy advisory committee to the board of directors,

within the board, is a possible mechanism for reviewing policy.

The continuation of the office of the employer adviser and the office of the worker adviser, with amended mandates to limit services to smaller employers and the non-unionized injured workers population, will go a long way to targeting the most needy groups for service delivery and make more effective use of resources. Administrative savings in the system should be achieved by reduced budgets for both offices, with parity in the budget allocations for the two. The employer community has been urging the OEA to do more with less, and they are currently operating within such reduced budgeting constraints. We urge this government to do its part to ensure that the OWA does the same. Again, parity in the treatment of the two offices is crucial.

We wish to make an additional comment, not directly relating to Bill 99 but specifically on the issue of the elimination of the Occupational Disease Panel. The alliance has been a long-standing advocate of health and safety and research in accident prevention. We do not, however, believe in or support a separate bureaucracy for carrying out this function. Resources should be more properly spent on research, not on supporting a bureaucracy. We therefore support the elimination of this agency and the assignment of this function to the WCB.

At this point, we wish to thank the committee for allowing us the opportunity to provide an overview of the changes introduced to Bill 99. We will be providing a complete and detailed text of our recommendations to the committee for your review within the next few days.

**The Chair:** Thank you. I apologize for that error. There is plenty of time for questioning.

*Interruption.*

**The Chair:** Excuse me. Every witness who comes before this committee, whether in support of the bill or against the bill, is entitled to our courtesy and to a fair hearing. That will be insisted upon in this committee.

We'll move now to the NDP caucus.

**Mr Christopherson:** I'm quite overwhelmed; I don't know where to begin.

**Ms Fiorentino:** Wait till you get our clause-by-clause full text.

**Mr Christopherson:** I'm not so much overwhelmed by the complexity but rather just the approach, the perspective. By the time you were done, if I didn't know anything about this, I would be convinced that every injured worker was out to rip off the system, deliberately got injured, that they caused the problem themselves, that somehow they did something wrong. That's the way this feels.

**Ms Fiorentino:** I'm terribly sorry if that's how you feel. That's not our intent. We're looking for a fair system for both employers and injured workers.

**Mr Christopherson:** I respect that that's what you feel. I do. I just have difficulty with the idea that there's something fair about denying the pension money that's put forward in here: taking away 50% of the money that's given for pension rights, taking away 5% of the income of workers. But it's okay to give employers a 5% cut. They're taking \$6 billion out of injured workers' pockets and giving it to employers. The unfunded liability



is owed by employers, not injured workers, not taxpayers. I sincerely say to you that I find it difficult that the average person would think this is fair. What is fair about that from an injured worker's point of view?

**Ms Fiorentino:** What is fair is that if we don't take these steps and measures today, there will be no compensation systems and injured workers will have no income.

*Interruption.*

**The Chair:** Order, please. We have to be able to continue these hearings. We're behind. I ask your indulgence in allowing questions and answers to continue.

**Mr Maves:** Your comment on the pension benefit is simply that there are a lot of injured workers who end up with a pension benefit who never had a pension plan before.

**Mr Howcroft:** You're talking about the retirement pension?

**Mr Maves:** Yes.

**Mr Howcroft:** That's our view, that if they didn't have a retirement pension prior to an accident, the workers' compensation system shouldn't provide a pension benefit after the accident.

*Interruption.*

**Mr Maves:** Also, you talked about revenue leakage. One of the problems that seems to be with employers in the system is employers not engaging in the system when they even begin their business. Is there a better way that we can make them aware of their responsibilities under the act immediately?

**Mr Howcroft:** I'm sorry, I couldn't quite hear the question. I sense some disagreement in the room. I couldn't quite make out what you were saying.

**Mr Maves:** Right now, a lot of employers, when they start, especially small businesses, are unaware of some of their obligations under WCB, occupational health and safety and so on and so forth. Is there a better way we can make them aware of it, for instance, maybe make them understand that obligation when they register a business or anything like that?

**Mr Howcroft:** I think education has a lot to do with it. We feel there is perhaps a more active role the Ministry of Consumer and Commercial Relations can take in making sure that people starting a business are aware of what their obligations are, workers' compensation being one; employment standards and occ health and safety being other areas. I think that will go a long way in helping improve our systems in Ontario if employers and employers-to-be are aware of what they have to be advised in hiring and dealing with employees.

**Mr Patten:** I must say that my reaction is somewhat similar to my colleague's who started off with the first question. Here's what troubles me: The system can't work unless there's a balance, with fairness for people being compensated, helped, assisted and going back to work. Every group has said that, but I don't see anything in here that says anything about what your sector would offer.

Believe me, I have great respect for your sector in terms of business development and part of the future of our nation. But what I'm receiving from you is that it's all one-sided. Somehow there's almost a negative view of workers, that they're taking advantage of the system and

you've got to push and push them. What the hell would happen to someone if they were injured and had no pension? What would they live on? They couldn't live on anything. I find that difficult.

If you don't have happy workers and you don't have healthy workers and you don't play a major role in that, what do you have? You don't have a business. There's an inextricable relationship there that I don't find is —

**Mr Howcroft:** First of all, I'd like to say that we are certainly not taking any attack at employees or workers in the province of Ontario. We've had a long-standing involvement in workers' compensation. In fact, we were involved in the historic compromise back in 1914-15. Our views haven't changed on workers' compensation. We feel there should be a fair and balanced system.

The view we're putting forward in our comments this afternoon and the more detailed brief that will follow supports the creation and maintenance of a fair workers' compensation system, based on insurance principles that are fair to both workers and employers, yet also take into account the financial viability of the workers' compensation system that's extremely important to all.

**Mr Patten:** It's actually quite viable as it is. There's some dispute, believe me, as to the viability of the fund itself.

*Interruption.*

**Mr Howcroft:** I'm sorry, I can't hear you again.

**The Chair:** Our time has expired. Thank you very much. We appreciate your taking the time to come before us this afternoon.

*Interruption.*

**The Chair:** Please, this committee is open to people who are in support of the bill and those who are opposed to the bill.

*Interruption.*

**The Chair:** If you insist on speaking, the committee will recess and we will not be able to continue.

*Interruption.*

**The Chair:** The committee stands recessed for 10 minutes.

*The committee recessed from 1730 to 1740.*

#### PROVINCIAL FEDERATION OF ONTARIO FIRE FIGHTERS

**The Chair:** I call the standing committee on resources development to order. We welcome representatives from the Provincial Federation of Ontario Fire Fighters.

**Mr Ron Christie:** My name is Ron Christie. I'm the chair of the workers' compensation committee for the Provincial Federation of Ontario Fire Fighters. Richard McCullough is from the Ontario Professional Fire Fighters Association. Tyler Briley is a firefighter from the city of Scarborough. Jim Simmons is the executive vice-president of the Provincial Federation of Ontario Fire Fighters. What I would like to do is put a face on the injured workers, specifically firefighters, for this committee. I would ask Tyler to speak to you about his injuries.

**Mr Tyler Briley:** Thanks very much for giving me this opportunity to speak with you today. This is basically my story and what I have been through. I wanted to relate to this committee my experiences as an injured worker and how this injured worker was viewed and

treated by the employer and the Workers' Compensation Board.

My story started nearly five years ago, August 19, 1992. I was involved in a ritual that started every shift of every day I was employed with the city of Scarborough. A thorough check of equipment was the order of the day. It was imperative not only for my safety but the safety of the public that I proudly served. I am, or was, a fire-fighter. This day started as every other in my previous 11 years on the job: Check the truck, put on your air tank and make sure everything is in order. Any of the equipment could be the difference between life and death, not only mine but the public's.

This day started as every other, but initiated a chain reaction of events that has changed my life and those of my family. While putting on the air tank assigned to me, the strap caught in the latch on the compartment door as I threw it over my head. It stopped in midair and jarred my right shoulder. This was such a fluke. In my previous 10 years on the rescue truck, I had thrown this over my head hundreds of times at the hall and in the anxious moments at a call, never having a problem.

The resulting injury didn't seem that serious. I was sent home and told to rest, that it was probably strained ligaments. I continued off for six weeks while I was being treated. The pain continued and seemed to be getting worse. Physio was prescribed and didn't seem to help.

Before I knew it, I had been off about three months. I was losing faith in the doctor and sought a second opinion. I was referred to a specialist at St Michael's Hospital, who again referred me for therapy. The months were slipping by and therapy wasn't helping. I was scheduled for surgery on March 8, 1993.

The pain from the surgery was worse than I could have ever imagined. It was two months before I could position myself to lay down in my own bed. The pain just never let up. It was three months after surgery when I sat up in bed, with the help of my wife. I started to cry like a baby. I just couldn't stand the pain any more. I was at the end of my rope. But things did eventually get better. My shoulder was starting to come around. After nearly a year of rehabilitation I managed to return to light duties. I was thrilled to be involved in any capacity in the job I loved.

It was January 1994. The day finally arrived when I was strong enough to return to the trucks, the front-line action and the camaraderie of the fire house. No one really knew what I had been through, with the exception of my family, and I wanted it that way. I would not have wished what I went through on any person, on my worst enemy.

As the months wore on, I had some discomfort but kept it to myself. I was scheduled for a checkup with the surgeon. This was what I thought would be the last time I would have to sit for hours in his waiting room and relive my agony through the people sitting around me in various stages of recovery. Finally, I was seen by the doctor, who had become all too familiar. I mentioned a numbness I had experienced in my hand during certain positioning and use. His remark of "Oh, shit" set off alarm bells of a different nature. It was established they had crushed the ulnar nerve in my elbow and it would

have to be moved. I was told this was not uncommon after the previous shoulder operation.

Once again I found myself lying on a stretcher being wheeled into surgery. This operation was fairly superficial when compared to what I had been through. I was only off work for about a month after the eight-inch incision in my elbow had healed.

I continued on a normal course of duty until April 4, 1995. This was the day I wrote my captain's exam. While returning from writing the exam, we were rerouted to a chemical fire that had all the makings of a potential disaster. This fire being petroleum-based, we were forced to use foam to quell this inferno that had already caused millions of dollars in damage.

In my efforts that day, I had to move a number of containers of this foam. They weigh about 50 pounds each. After the fire my shoulder was sore, but I didn't book off. I continued to work, hoping it had been only strained. After two weeks I was forced off with the pain and had to seek medical attention. I consulted with the doctor and therapy was ordered. The results of the therapy were limited and I sought a second opinion. The result of this was my return once again to surgery. The date was set for July 1995.

As before, the resulting recovery was excruciating. Once again, pain was my constant companion. I was the one injured, but my whole family suffered along with me. My young kids were again exposed to their father's cries in the night.

I made my way through the sessions of therapy. They were times of the day I came to dread. I eventually returned to duty in early January 1996. Everything seemed okay and I managed to complete the tasks at hand. The summer months rolled around and the nagging pain in my shoulder seemed to be getting worse. As usual, I hoped I would wake up and it would be gone and this was all a bad dream. This simply wasn't going to happen. The pain continued to get worse and finally I was forced off work. Up to this date I had been covered under the Workers' Compensation Board for the two surgeries on my shoulder.

I didn't apply for benefits right away, as I wanted to see the specialist to confirm that this was all related and to file for the benefits. On December 13, I filled out the appropriate paperwork and waited for a response. The last week of March arrived and I received the denial from the board.

This placed me in an awkward position. With the time I had already been off converted to sick time, my sick bank was nearly exhausted. I was forced on to long-term disability. At the age of 42, I have been cast upon the scrap heap of society. I may be feeling sorry for myself, so bear with me.

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The impact of this injury on my life has been huge. I can testify I am now a miserable sod and I question my wife's sanity when she stays by me and accepts my outbursts and mood swings, the guilt I endure as a result of missed events — the recitals, the father-and-son hockey games, and my inability to throw the ball to my kids. One of my pastimes and true loves was coaching the kids. I know I had a special gift. I could communicate



with the kids and build their self-confidence and their self-esteem. I know I have had a big impact on many of their young lives and I'm sorry I can't be there to help them as I once was — more guilt.

The only assistance I have received to help me sort out this mess is from the pension and compensation officer who is provided by the Scarborough Professional Fire Fighters Association. This dedicated professional has stood by me from the word go and to him I owe a great deal, not only for his knowledge and guidance but for the moral support he has provided me. About 16 years ago, when I was as green as the new leaves on the trees, a firefighter told me not to think I was anything special because I was a firefighter. I can still hear his words of advice, "You're nothing but a number around here and don't forget it." I must say I never forgot those words of wisdom that day, though I never really believed them. That firefighter is the officer now assisting me with my claim.

Now, after 16 years as a firefighter and everything I've been through, from the images of dead people we didn't save, the elderly whose time had come, the mangled forms we freed from unimaginable vehicle accidents, the stress of chemical spills and fires, the results of domestic violence, the suicides, the murders and my personal brushes with death, am I wrong in my expectations to have the chief of the department go to bat for me, to get involved on behalf of one of his men? Apparently in Scarborough it is. Instead of supporting their employees, the Scarborough Fire Department deems it appropriate to send their senior officers to WCB appeals and tribunals, not to support the injured worker but to fabricate and falsify information to save the city money.

These ingredients of deceit and collusion complete this script of events that have changed my future. The only contact from the employer was a letter advising me of a job opening in the communications division. I was not able to accept this position at this time. After consulting with my doctor I was advised, due to the narcotic pain medication I was taking, that this job of high stress and responsibility was not an option. Secondary to the decision is the fact this job may not exist in a year or so due to the impending amalgamation.

This claim represents the bottom line — money. It's not about loyalty and integrity or who's right and who's wrong. It's about money. The only contact from the employer was to cover their asses and obligations under the existing Workers' Compensation Act. Their actions were self-serving and should not be considered in any way acts of compassion on my behalf. I am now damaged goods and they could care less. This is unjustified treatment for an employee who would have laid down his life for the people he served.

This treatment is under the current Workers' Compensation Act. I ask you, if a dedicated worker is currently treated like this, how will they be treated when the new rules are implemented, when there is no third party involved? When you hand over more authority to the employer, do you think they will ever rule in favour of the injured worker and against themselves? If you do, you must also believe democracy will be the order of the day in Hong Kong. Let's not kid ourselves. I, as an

injured worker, have been treated like dirt by the employer and things will be worse for those who are unfortunate enough to have to follow in my footsteps.

In closing, I would like to note I am a supporter of this government. I followed the election with interest as I was selected by the Toronto Star to be featured in their weekly assessment of the election as an undecided voter. My vote went to the Progressive Conservatives and their Common Sense Revolution. It was clear that we, the province of Ontario, could not continue in the direction we were heading.

I did not plan to become an injured worker, but this is what I've been dealt. This is who I am. I have every confidence I will win my appeal and be reinstated as an employee of the city of Scarborough. I am very fortunate to be represented by a group of dedicated professionals and support staff of the Scarborough Professional Fire Fighters Association, Local 626, but my thoughts turn to the employees of small companies and mom and pop operations. Who will look out for them?

I believe changes are necessary. In my case, the adjudicator wanted to overrule the decision of the board and approve the recurrence after reviewing my file, but this was beyond his authority. The person most familiar with the case is denied the authority to overrule those who may not have a grasp of the complete file and case history.

The current changes should be reconsidered. As they stand, they are ingredients in a recipe of injustice and an uncaring assault on injured workers that in no way assists them on the road to recovery and re-employment.

**Mr Christie:** I hope you have a brief in front of you. I will limit my comments to a couple of the areas in the brief that are of concern to our association and the firefighters of the province.

The bill eliminates section 95 of the act, and with it the Occupational Disease Panel. This panel was established in 1985 due to the obscenity of occupational diseases in the province. The ODP has recognized more occupational diseases in five years than the board did in 25 years. Since the mid 1960s, firefighters in this province have been attempting to gain coverage and acceptance for occupational diseases that are unique to firefighters. We are exposed daily to the products of combustion, chemical spills and other unknown hazards. These insidious hazards result in our members contracting various cancers and heart disease.

In 1988, we approached the panel with a request to study these diseases, after years of being turned down by the board. The panel accepted the challenge and identified brain and lymph cancers as occupational diseases, which were contained in IDSP report 13, released in September 1994. The firefighters of this province were ecstatic. Finally, some of the health hazards of our proud profession were being recognized. Sadly, not the case. The report sits at the board. They have not acted on it for three years.

This report has been hailed worldwide and is used in a number of jurisdictions to support firefighters who are suffering from the identified illnesses. The scientific community applauded it, the employer community did not oppose its acceptance, yet the board does nothing. I

shouldn't say that. They do something. A firefighter in the city of Toronto has lymphoma. He filed a claim under workers' compensation and used the ODP report as substantive evidence in his claim. The board, in its wisdom, gave the claim to a toxicologist, whatever that means. We are unable to determine what a toxicologist is or does. He said the report of the ODP was nonsense. He said it is scientifically incorrect; therefore, this claim has no merit. Guess what happened? The claim was denied. It sits in appeal.

You propose to hand over the occupational disease studies to the board and the board will look after it. You expect us to believe that the board will monitor development and generally accepted announcements in health sciences and related disciplines and that these will be reflected in benefits, services, programs and policies that are consistent with the purposes of the act. Hogwash.

What does "generally accepted" mean? Will cost be a factor? Restrictions are placed on WCAT to look only at board policy, effectively eliminating that area of occupational disease consideration. There is no direction or role for the board to make public its reasons for decisions on occupational disease claims. The ODP is not being integrated into the board, it is being eliminated.

This is a knee-jerk reaction to advances in the recognition of work-related illness done by the panel in the last 10 years. Firefighters and workers of this province will pay the ultimate price for this. If you are off work, you're either sick or on workers' compensation benefits. If you can't get workers' compensation, you're sick. If you don't have a sick bank, you're on public assistance. We're going back 40 years in this area and we ask that you rethink this ill-advised section and let the ODP continue with its valuable work.

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Mental stress is going to be eliminated under Bill 99. This is amid growing problems in the workplace of sexual and racial harassment. From our perspective, we have concerns for our firefighters who suffer from the cumulative effects of what is known as critical incident stress. It's very common in the emergency services, not only us but in ambulance and police. It's an acute reaction to the horrendous situations we daily encounter. There are times when the results of these encounters do not surface for long periods, but when they do, the firefighter who cannot work will not receive compensation under your proposed amendments. It's as if injuries to the psyche are not compensable, but if he can't work because of these, where is he to turn for benefits? Why would you restrict them further?

Section 21(1) requires a worker to file a claim as soon as possible after an injury. The present system is being abused by the corporations, cities and towns around the province. I have received countless calls from firefighters who discover their employer did not file the claim or tried to coerce them into not filing them.

There is a firefighter in Nepean who suffered a heart attack while on duty. He was taken by ambulance from the station. Thirty days later, while he's off wondering whether he's going to live or die and wondering whether he's going to have any money to feed his family, he receives a note from the ambulance people — they want

to be paid. He assumed it would be paid by the Workers' Compensation Board and called the board. They had never heard of him because the city of Nepean does not recognize workers' compensation claims. It's not the compensation board, it's the city of Nepean and the person who handles those claims. They did not file a claim and all the problems went along with that.

**The Chair:** If you could just wrap up, please.

**Mr Christie:** Okay. My final comment would be that firefighters are dismayed by the restrictions placed on the submission time and the lack of substantive public hearings on Bill 99. We are of the opinion that nothing will come of our presentation today and that the Conservative members of this committee are not listening.

**The Chair:** Thank you very much. That concludes the presentation time.

## ONTARIO PSYCHOLOGICAL ASSOCIATION

**The Chair:** I'd like to call upon the members of the Ontario Psychological Association, please. Thank you very much for coming this afternoon.

**Dr Warren Nielson:** My name is Dr Warren Nielson. I'm a psychologist, a past president of the Ontario Psychological Association and director of the rheumatology day care program at London Health Sciences Centre. With me is Dr Ruth Berman, our executive director and a rehabilitation psychologist. Thank you for allowing us to present at these hearings.

There are many aspects of this legislation with which we agree; in particular, the recognition that prevention can play a key role in both reducing injuries and containing costs. However, in the brief amount of time that's available, we would like to simply highlight aspects of the legislation that remain a concern to us and refer you to our written submission for a more detailed discussion.

**Dr Ruth Berman:** I just would like to add that we submitted a copy of our brief to the committee. I believe that was sent, probably about two weeks ago, and our comments today are based on that brief and were prepared in advance of material we just recently received from the WCB in connection with the functional abilities evaluation, the prescribed form, and as well the intended plan for how chronic pain will be dealt with.

Unfortunately, we are not elaborating on those today because we just received that material. We may make some comments after we make our presentation, but we would like to provide some supplementary written commentary following our presentation today to the committee and as well to the board on this new material.

**The Chair:** The clerk will have shared all of that with us. If you wish, after this presentation time, to submit something further in writing, that's perfectly welcome as well.

**Dr Berman:** Thank you.

**Dr Nielson:** The first issue pertains to the designation of health care professionals authorized to determine impairments under Bill 99. One type of impairment defined in section 2 is "psychological damage arising from the abnormality or loss." Yet section 47 indicates that only physicians may provide assessments of impairment. We find it rather strange that physicians alone, but



not psychologists, should be authorized to determine psychological impairments of injured workers. We would hope that such an omission was simply an oversight.

Psychologists are authorized under the Regulated Health Professions Act to diagnose psychological disorders and dysfunctions, and their ability to perform this controlled act has been recognized in many other statutes, for example, under auto insurance law. In addition to being consistent with our training, skills and scope of practice, we think it would be most appropriate, and in the best interests of both injured workers and employers, to include us as assessors of impairment under Bill 99, and thus are recommending an amendment to section 47 to allow for such a provision.

Next, I'd like to turn to the issue of chronic pain. We believe this legislation is fundamentally flawed with respect to chronic pain. The approach taken to chronic pain is based on two principal premises: first, that there's no physical basis for pain which persists beyond the "usual healing time," and secondly, that because of psychological and social influences on pain, the relation to the original injury becomes insignificant.

Both of these premises are patently false. I do not know where those who drafted this legislation obtained their expert advice, but these statements are not consistent with existing scientific knowledge, either medical nor psychological, concerning chronic pain. The concept of "usual healing time" is an anachronism. Although the initial injury may heal, we now know that permanent changes can occur in the spinal cord and other central nervous system structures that will cause pain to persist and even spread to other areas of the body. These are real, physiological changes. I refer you to the review paper by Coderre and colleagues cited in our brief.

It is true that psychological and social factors influence a person's experience of pain. For example, if a child is highly anxious while receiving an injection, he or she will experience more pain than would be the case if he or she were relaxed. But while psychological factors play an important role, they do not diminish the significance of what is occurring physiologically.

Unlike other medical conditions, pain is not something that can be seen; it is an internal experience. This fact is at the root of the many myths surrounding pain and of the suspicion and distrust often directed towards those with chronic pain. These prejudices and misunderstandings are about to be embodied in this statute and will become law in Ontario.

Bill 99 states that after a prescribed period of time, about 13 months, all compensation and health care benefits provided to injured workers who have chronic pain will be terminated. It is important to recognize that this change will disproportionately harm those in lower socioeconomic groups. Why? Because those who have lower-paying, physically demanding jobs are (a) most at risk of developing chronic pain, and (b) the least likely to return to their jobs.

This statement is not simply our opinion, but rather it is based on the scientific literature, some examples of which are provided in our brief. These workers are also the most difficult to retrain for alternative employment, particularly during a time of downsizing and a shift

towards a more technologically driven economy. Under Bill 99, most of them will end up on welfare because that's the only option that will remain available to them.

We believe it is the responsibility of government to protect vulnerable members of our society, not to increase their vulnerability. Moreover, this migration from workers' compensation to welfare will shift the economic burden caused by work-related injuries from employers to taxpayers.

The elimination of compensation for chronic occupational stress is similarly problematic. Although Bill 99 provides benefits for those who develop psychological problems following a traumatic workplace event, such benefits will be unavailable to those who develop problems as a result of cumulative stress. In situations where workers have developed psychological disorders as a result of cumulative occupational stress, they should be treated the same way as those who develop medical conditions. They should meet established diagnostic criteria and there should be a clear connection to the workplace. Personnel decisions such as layoff, job demotion, transfers and interpersonal tensions should not qualify. Specific criteria are again outlined in our brief.

To treat those with chronic pain and chronic stress differently from those with other medical conditions is discriminatory and this legislation should be amended to eliminate that discrimination.

#### 1810

**Dr Berman:** A final concern pertains to work re-entry and vocational rehabilitation. Under Bill 99 it appears that the employer is to guide the work re-entry process. This arrangement appears to place the employer in a potential conflict of interest, and I think that was very well illustrated by the scenario that our previous speaker presented. In an ideal world where the employer is satisfied with an employee's work and has no conflicting motivations, this would not be a problem. However, employment relationships are often less straightforward and employers may not always be fully committed to the work re-entry process. This again places the worker in an inappropriately vulnerable position. Although we agree that both the employer and the worker must co-operate in the work re-entry process, the inherent conflict of interest embodied in an employer-driven re-entry system makes that approach untenable. We believe that a neutral third party such as the WCB should continue to play a directive role in this process in order to ensure that the rights of both parties are protected.

We also feel that the sections of Bill 99 pertaining to the employer's obligation to re-employ are inadequate. If a worker is terminated within six months of re-entry, the employer must "rebut the presumption" that they have not fulfilled their obligation or face a penalty, but after that relatively brief six-month period, no sanctions or penalties can be levied. Under this arrangement, a worker who struggles for six months to maintain his or her job despite physical problems could be terminated. Although a labour market re-entry program may be provided, what happens if the person does not get better? If they happen to have chronic pain, they will not have access to any WCB benefits and their chances of obtaining alternative employment will be near zero.

In summary, the Ontario Psychological Association supports the government's efforts to revise the workers' compensation system in a manner that will increase efficiency and accountability. We strongly support the increased focus on prevention and believe that, in the final analysis, prevention can hold the key to cost containment, but new legislation should also provide appropriate access to health care and adequate compensation benefits. For those unfortunate enough to develop chronic pain or chronic stress conditions, this legislation will be devastating. We urge the government to amend Bill 99 in order that it will not discriminate against these vulnerable members of our society.

We also recommend that psychologists and other regulated health professionals who are authorized in law to diagnose under the RHPA be included in section 47 of Bill 99. This would allow all legally recognized health care professionals who are specifically trained to conduct diagnostic assessments of impairment to provide such services to injured workers.

On behalf of our members, we would like to thank the committee for allowing us time to present this afternoon and we would be pleased to answer any questions you may have.

**The Chair:** Thank you very much. That allows us about three minutes' questioning per caucus, and we'll begin with the PC caucus.

**Mr Maves:** You asked a question about where the expert advice came from with regard to chronic pain, and I think that in Nova Scotia they have a similar section in their WCB legislation where they don't allow chronic pain. Theirs was based on the work of Dr T.J. Murray from Dalhousie University. I just wondered if you were at all familiar with Dr Murray's work.

**Dr Nielson:** I'm vaguely familiar with it. I don't think he is a central figure in terms of the neurophysiological basis of pain, and I guess our primary objection is that there are often health care professionals, including physicians, who aren't aware of the neurophysiological research that specifically addresses the underlying mechanisms in chronic pain. Probably the average physician and certainly the average psychologist wouldn't be aware of that. So it's a relatively narrow group of people who do research in that area and are probably appropriate to provide that kind of information to the government and other bodies that are investigating.

**Mr Maves:** So most of that research that you're referring to is provided by psychologists?

**Dr Nielson:** No. It's provided by physicians who specialize in pain, the neurophysiology of pain, and neurophysiologists, PhD non-physicians.

**Mr Maves:** There's another thing I wanted to make a quick comment on, Chair. Bear with me.

In the return-to-work process, you mentioned that you thought the WCB should stay involved in the process, and in sections 46 and 47 they are very much still in the process. I wonder why you came to the conclusion that they wouldn't be, because sections 46 and 47 clearly state that if there is any kind of dispute or disagreement with worker and employer, the WCB indeed steps in.

**Dr Berman:** My background is in vocational rehabilitation. When I am in practice, much of what I do is

evaluations to assist case workers in the WCB in making some sort of decisions around rehabilitation planning. My concern stems from the fact that under the existing system it has occurred on occasions too numerous to mention that many of the people I have seen have gone through a so-called work re-entry program where an attempt was made by an employer to introduce accommodations and modifications in the workplace, and very often they are back doing exactly the same job they did, they may be there for a few months and then they are laid off for some other excuse that seems to be raised by the employer.

Many of them have told me of their experiences of feeling very betrayed by employers, just like the firefighter you heard presenting before. Many of them were loyal, reliable workers for many, many years and were subsequently shocked by the way the employer responded to them in a time of need and a time where their obligation to introduce modified work was really unsatisfactory, and they were right back where they started from, which is why they ended up then going through a rehabilitation process to look at alternative employment.

**Mr Maves:** Sections 46 and 47 provide for the board to play a mediation role in a return to work, so that's not so much your concern as what happens once they go back to work.

**Dr Berman:** Yes.

**Mr Patten:** Thank you very much for the presentation. I found it enlightening. We've only got a couple of minutes. First of all, I really look forward to your comments on the draft form that has been presented and how you see that would be received, dealt with and what value it would have, or any alternatives you have.

On the whole question of chronic pain and chronic stress, we had a presenter from the legal resource centre, David Baker, executive director. I don't know if you're familiar with him, but his deputation here suggested that there is a strong basis for a court challenge to that, based on Supreme Court rulings heretofore. But it seems to me that if pain persists beyond the usual healing time, then we just wish it away. I would appreciate it if you have further references to the establishment of chronic pain, because it appears to me that if there is still some question as to the medical-scientific legitimacy of that, then that too may be lumped into court challenge. I think there are going to be legal hassles with this legislation in a whole variety of areas. Is that your impression as well?

1820

**Dr Berman:** Yes. In fact, during the meeting we had with some of the legal people at the ministry, we introduced that notion. If it's not compensable, does that mean this could end up in lawsuits in the courts? It's something to think about.

**Mr Patten:** It struck me, listening to some of the presenters today, that we've weakened what essentially was a no-fault — that is not to say there are not things that can be done to improve the way in which it's administered, but we've weakened the no-fault side of things to the point where it's going to lead to further litigation left, right and centre and that will, as you say, pass this on to other areas outside of the WCB, which means it's going to save employers: less benefits for injured workers, and



who's going to pay for that? It's going to be the taxpayer, as you say, in other forms, through welfare and what have you in that particular case, so I agree with you on that.

**Dr Berman:** If you would like, I could make two comments about the form. That information was received at our offices just a few days ago. We're studying the form. Two things about it stand out.

First, it's called a "functional abilities" evaluation, and yet the only thing it talks about is physical capacities. Those who work in the field of rehabilitation, particularly where we're looking at the ability to work, recognize that work capacity is much more than physical capacity and that there is not a direct relationship between physical capacity and functional capacity. There is no recognition at all of the emotional and cognitive factors that may influence a person's ability to work. That's one problem.

The other problem is that this form is to be filled out by health care providers. You are asking injured workers to give consent for this information to be released prior to the information perhaps even being obtained. As health care providers, we have an obligation legally, morally, ethically to obtain informed consent by having somebody consent to the release of health care information before knowing what information is even being released. That puts us in a very, very difficult position vis-à-vis our own standards of practice. I am sure that if other health care providers are presenting, you will similarly hear those kinds of statement being made.

**Mr Christopherson:** I think we're all quite taken by your last comment in terms of informed consent. That's an excellent point.

**Dr Berman:** What you are doing then is you are waiving your right to informed consent by agreeing to provide information before you even know. So it's not informed consent; you're giving up your right to consent.

**Mr Christopherson:** Right. I certainly have raised the point, and my colleagues have too, that the whole concept of giving up your right to the privacy of your medical information is something that jars a lot of people, and rightly so, and yet all we hear is that the employer needs this information and there doesn't seem to be any consideration for what ordinary people are being expected to give up.

Overall, your submission has been extremely helpful, and I expect, I can assure you, that quotes and examples you've used will be placed across the province and used very effectively — as effectively as I can.

You state on page 2 in the second-to-last paragraph: "In situations where workers have developed psychological disorders as a result of cumulative occupational stress, they should be treated the same way as those who develop medical conditions." I'm speaking, of course, to the fact that chronic occupational stress is being eliminated entirely from a compensable claim.

We heard a submission a couple before yours — I don't know if you were here — from the Alliance of Manufacturers and Exporters Canada. They said, speaking to the exclusion: "This major amendment is an important affirmation of the workers' compensation system's intent as an income-replacement scheme for injuries or diseases directly and solely work-related. It is also a clear

acknowledgment of the complexity and multifaceted nature of mental stress, and the" — and I think this is the critical point — "inability to clearly link such a condition solely to the workplace."

I notice you state very clearly that there needs to be the ability to do this. It ought to be only for things that are directly related. Employers are coming in time after time, saying, "The government is right to exclude chronic occupational stress because there is no scientific-medical ability to link stress in the workplace to time off work." You say something different. Could you respond to the position put forward by the Alliance of Manufacturers and Exporters, please, in terms of the inability to this?

**Dr Berman:** We haven't seen their brief but we heard their presentation. The issue of chronic occupational stress I think is something that has preoccupied the board, legislators and health care providers for some time. There was one period of time a number of years ago — I can't remember the year — where there was a series of public hearings in which some consideration, I believe, was being given to the possibility of treating chronic occupational stress as a compensable disorder. There were presentations made by our association and others, and I am not sure where — somewhere in the bowels of Queens' Park — there must be at least three submissions that we have made on chronic occupational stress.

Practitioners in the mental health field are trained in the diagnosis of mental and behavioral disorders. There are classification systems for arriving at a diagnosis. There are criteria that have to be met. Saying, "My job makes me nervous," is not a disorder. All of us have to deal with a certain amount of anxiety that goes along with being a worker. Workplaces are not free of stress. That's not the same thing as having a recognizable psychological disorder. Qualified diagnosticians — and in this case the suggestion is that it be either psychiatrists or psychologists — through their skills and training should be able to make some determination as to whether or not this disorder bears any relationship to the workplace setting or stems from some other situation.

The other thing is that people —

**The Chair:** I'm sorry, our time is up. Could you just finish, please?

**Dr Berman:** Things don't happen in a vacuum either.

**Mr Christopherson:** So you think it can be directly linked?

**Dr Berman:** Yes, I think it can be directly linked.

**Mr Christopherson:** It can be done.

**Dr Berman:** If it's done properly.

**The Chair:** Thank you very much. On behalf of the members of the committee, I thank you for taking the time to come this afternoon. We appreciate your advice.

1830

#### ONTARIO NETWORK OF INJURED WORKERS GROUPS

**The Chair:** I would like to now call on representatives from the Ontario Network of Injured Workers Groups. Welcome.

**Mr Karl Crevar:** My name is Karl Crevar. I am the president of the Ontario Network of Injured Workers

Groups. With me are Mr Steve Mantis, the secretary-treasurer of the Ontario Network of Injured Workers Groups; and Mr Phil Biggin, who is its executive vice-president.

The Ontario Network of Injured Workers Groups is a non-profit organization comprised of 34 organizations across Ontario. For many years, injured workers and their families have had to strive for justice and dignity lost simply because of workplace injury and/or disease. For this committee to deny access shows complete contempt by this government, the members on the government side, for the democratic right of input by the citizens of Ontario.

That's been shown on at least five occasions. It's unfortunate that Mr O'Toole is not here with us right now, because Mr O'Toole was in attendance at a meeting last night in Oshawa, where it was clearly pointed out that injured workers wanted the right to be heard, and you are denying the democratic right of those injured workers to be heard.

I ask the question, why? Are you afraid to hear the truth? The gentleman who was here is the truth. That's what makes me angry: when we sit here and you deny the people, the injured workers, their right to tell you what the real truth is about what happens after sustaining an injury. That's a disgrace.

This mockery of justice has made it very clear that this government, which has misled the people of Ontario by creating — and I repeat "creating" — the fabricated crisis in the workers' compensation system, is saying very clearly it does not want any compromise or balance, unfortunately. That again is shown by the misleading information that the government had consulted with injured workers. That is completely false. That is a lie.

If you call consultation, as Minister Jackson says, talking to injured workers about personal files, then I'm sorry, I must be out in left field somewhere. That in my books is not consulting with thousands of injured workers in this province. I might add that thousands of injured workers had an opportunity with the royal commission, which your government cut off. They had an opportunity; they had the time to talk to the people who make those changes or recommend making those changes.

To truly have a full understanding of the impact this legislation will have directly on workers, their families and the taxpayers of Ontario, it would only make common sense to hear from all those concerned. This denial of justice is a disgrace, adding insult to injury.

Bill 99 does not merely deal with amendments to the current act. It is a complete rewriting of how injuries or diseases will not be compensated, and that's been demonstrated here today and throughout the hearings. Why was the word "fair" removed from the act?

I want to read you some echoes from the past. You've heard the employers' submissions. There was a vocal minority in the past that considered workers to be animated, disposable machines: You work them as hard as you can, fix them, if it's possible, to return them to productivity and dispose of them as cheaply as possible if they no longer have value in your workplace, all in the name of profit and greed. The voices of this vocal minority are the same voices that are heard today asking

for benefits to be reduced — Bill 99 does that; for back injuries and other soft tissue injuries to be removed from being compensated — Bill 99 does that. Those words were echoed 90 years ago and we hear the same arguments today. They care little about what happens to the victims of their accidents.

In 1905, factory inspector John Argue described an age of hustle and bustle, of greed and of speed, of complicated and ever-changing workplaces often worked to their utmost capacity. It was an age of unusual danger to life and limb on a continent more noted for material enterprise and progress than for its belief in the sacredness of human life. If we ever forget that human life comes ahead of profit, then we have a very serious problem. We have a great concern with Bill 99 because we feel that is what it's doing.

In 1909 inspector Robert Hungerford felt that the wonderful advancement of industry was resulting in the maiming and injury of many working men and women. These words, again, were spoken over 90 years ago, and I ask you, what has changed? Nothing. Those words are re-echoed today.

In 1996 a total of about 400,000 claims for compensation were registered with the WCB. They recognized over 90 years ago that something had to be done because people were being killed and maimed in the workplace. What do we see today? What have we accomplished? Not very much.

Bill 99, your bill, will steal \$15 billion out of the pockets of injured workers and their families. Families will be destroyed. They will be forced on to other income supplement programs. They will be driven further into poverty and despair, and clearly you've heard these arguments in other presentations earlier today. All this, while the business community — I ask you to make sense out of this — will be rewarded not only by the \$6 billion and the 5% reduction in assessment rates, but will also receive and continue to receive cash rebates of about half a billion dollars annually. Where is the fairness and justice? Where is the crisis? Again I ask you, who is paying? Injured workers, their families and the taxpayers of Ontario, that's who will pay.

I want to remind government members that workers gave up their civil rights to the courts in exchange for compensation. The system agreed to be funded collectively. It was an agreement that it was to be funded collectively by employers through assessment rates, not by the taxpayers of Ontario. Today the government and the business community have the gall to refer to workers' compensation payments as an unacceptable tax on business. I say to you, with the amount of fatalities and injuries that are continuing today, that's unacceptable in today's society.

Chief Justice Meredith in 1914, Justice Middleton in 1932, Justice Roach in 1950 and Justice McGillivray in 1967 could not in their wildest nightmares dream that injured workers would be called upon to surrender their benefits to pay for a debt created by non-adherence to this admonition. Not one of these learned men mentioned workers paying down a debt. If you are not familiar with the names, Justice Meredith was the justice who enacted the workers' compensation system. The other justices



were in charge of the royal commissions, and in each of those royal commissions improvements were made, not benefits taken away. Benefits were increased because they saw the need.

Payment of assessments is and always has been a legitimate business expense to protect liability. That's the reason we had workers' compensation introduced. The worker contributes more than anyone else under all compensation laws. If workers only get a percentage of their wages when unable to follow their employment as a result of an accident or disease, they contribute to the accident in lost wages. This is a point that has not come out very clearly in many cases that you should really look at when you start talking about who's responsible: Workers and taxpayers also pay for compensation in the increased price of commodities. That's a fact. That's the price of doing business. If there's anyone in this room who can tell me that a businessman, when he lays his business plans out, does not incorporate labour costs, which include compensation costs, please say so.

In 1949, Wilfred Daniel Roach, a justice of appeal of the Supreme Court of Ontario, reported that the compensation workers receive is not charity, that they have in fact purchased it. This act should be considered for what it was originally intended for. It is not a system for dispensing charity. Injured workers do not ask for charity. It's a right.

I want to mention to government members, if you're not familiar, that when we talk about the \$9 billion the government is proposing in Bill 99 through the de-indexation formula, in December 1985 the Progressive Conservative Party position was:

*"Mr Gillies:* As members of the assembly, we all have to share a very deep concern about the people in this province who labour day after day in dangerous occupations and who put their lives on the line when they go to their workplace. I believe Ontario has recognized for many years the need for income protection, for pensions and for benefits for people who are placed in such situations. After due consideration, I am very pleased to be able to inform the House our party will be supporting Bill 81." That's the Progressive Conservative Party.

*"We believe* that the time has now arrived for annual increases, however determined, to be granted not as a matter of annual legislative review but as a matter of right and as a result of automatic increases."

That was recognized. What do we face in Bill 99 today? There's not one penny. When you talk about the theft of \$15 billion from injured workers, the fact that employers enjoy that 5% assessment rate reduction — show me in the act where employers are going to pay anything towards fixing the so-called financial crisis.

At this time I would like to turn the floor over to Mr Biggin, who will target in on some specifics, other areas of concern, and then we will do some closing remarks and open up for questions.

1840

**Mr Phil Biggin:** I find it totally incredible that the government consistently refuses to accommodate injured workers to appear before this committee. These are your constituents. Many of these people were the people who put you into power, yet you hide behind the protocol at

Queen's Park to deny these people the opportunity to present their stories.

You had today a very graphic example of a firefighter and how his injury impacted on his life and on the life of his family. These are very important stories that you must be exposed to if you're going to understand what you are doing in Bill 99 and why we so strongly oppose this legislation. This is the most drastic rewriting of the workers' compensation system since Justice Meredith set it out in 1914.

You heard the manufacturers' association today tell you — and they were incorrect — that they were at the table. Yes, they were at the table, but they were not taking the position this organization took today, which was to rob and take away \$9.3 billion just through de-indexation, and \$15 billion. We're not creating this. This was very clearly indicated in Minister Jackson's paper.

Why are the injured workers being held responsible for what you call a debt but what in fact is the unfunded liability? Many proposals have been made by our organizations over the years on how to correct that unfunded liability. It doesn't have to be done by robbing injured workers of \$15 billion in the next 17 years. This is very unjust; this is very unfair. This is the reason — and you have to admit this is the reason — you are afraid to confront injured workers directly.

Why do you think our people are so angry? They're angry because they don't have the opportunity to present their case to you on why Bill 99 is such a disaster. This is something you're going to pay for. You'll pay for it in the hearings that take place in community after community, because we're a provincial organization and we will be there with the injured workers; we will be there with labour to tell you that deindexation is a disgrace. We told the NDP that when Bill 165 came across, and we are telling you today that you are going much beyond anything that is in Bill 165, and this is something injured workers will not forget.

All future workers in Ontario are being disoriented from chronic pain, repetitive strain, chronic stress, having their benefits cut back. There's no reason for this. What are you people trying to do? Are you trying to create chaos in the streets? Are you trying to pit people against people in our communities and across the province? We think Ontario is a great place to work and grow up in, but it's not that kind of place today, because your government is tearing down every piece of legislation that relates to the working people of Ontario who have built it up to the position it is in Canada and in the world.

You have chosen to support big business and those people who are a minority in our province, and you will pay for that in the long run, because the workers themselves will certainly put you out of office. You should reconsider what you are doing with Bill 99, because whatever it is, if it only lasts for another two or three or five years — and it certainly will be a transitional system — it will be replaced by something that gives justice and fairness to the working people of Ontario.

**Mr Steve Mantis:** It's pretty hard to follow up after that one. I'm basically confused. I'm confused because of the process that has been used to develop this bill and I'm confused because the people I see sitting around the

table who are empowered to make decisions are mostly new faces. I see a couple of old faces who might actually know some detail about workers' compensation.

It's a very complex system, and to just mirror words the minister is saying as flowery sentiments, which are all laudable sentiments, but to not understand the impact on human beings — we are not pieces of equipment. That's the way we're being treated in this law. Both the process and the law reflect what I would call a dictatorship, a lack of access. There has been no meaningful process in terms of trying to make a system work.

I'm kind of new in that system too. I've only been working at it and studying it for 18 years. There are people here who have been involved longer than that. We've learned quite a lot, but there has been no access to the process to improve the system. What we get is a bill that proposes dictatorship-type effects. Let me just run through some that I quickly jotted down.

Subsection 21(7), notice of the claim: A copy goes to the employer right away. It's supposed to be a partnership we're talking about in Bill 99. Does a copy go to the worker of what the employer writes? No requirement there.

Subsection 22(3), material change: I am now required to report any material change to the Workers' Compensation Board. What does that mean? What material am I changing that I'm supposed to report? Is it because I got an increase in pay? Is it because my son got a job? What is it? Tell me. Should I report everything because I don't know, because now I'm going to be subject to criminal prosecution if I don't report? Am I becoming a criminal because I lost my arm? Is that the way it works?

Subsection 33(2), notice of the claim: The WCB in its wisdom — and we know about its wisdom — is now going to tell me what is best for me as a person medically. They're going to tell me that it's more expensive to give me benefits than it is to send me for this new surgical treatment that they know will work great, and I run the risk of suffering lifelong consequences. My personal being is subject to the WCB telling me what to do for medical treatment.

**1850**

My prosthesis, section 39(1), repair of this thing — I lost my arm at work. If this arm breaks at work, maybe they'll fix it, but if it breaks somewhere else, there's no requirement to fix this prosthetic arm. Is that justice? Is that fair? Or is that miserly cost cutting all done in the name of, "I can save money over here if I screw you"? Is that the kind of system we want in Ontario? Do we not want systems that say, "Let's sit down together and actually make systems that will work for both of us"? I think we can find that common ground. When we've sat down with employers, we've found that common ground.

I find it really very disturbing when we see a lack of participation by the people that this system is all about, and it's all about dollars. That's what's most important here: Who is going to get the almighty dollar and be able to put it in their pocket? I don't know what they're going to do with it, but what we see is that we're the ones who have to give it up, the \$15 billion over 16 years, \$1 billion a year. Why? Because I got hurt. Because I lost my arm, I now have to pay \$6 billion to the employer?

**The Vice-Chair (Mr Jerry Ouellette):** We're over the time already. If you could wrap up, we'd appreciate it — I've already let you go considerably past the amount of time — just to be fair to the other presenters.

**Mr Mantis:** I appreciate that.

**Mr Crevar:** You've heard many comments, many concerns. The one that hasn't been addressed by our organization is the release of medical information. When you question yourself, "What are we talking about?" I ask you, the members of this government, as a taxpayer — I have copies of this form I want to give to you. I want you to sign it so that I can get access to your medical information, so that I can determine whether you are fit and capable of doing your job. I ask you to take this form.

This is an invasion of privacy. I know it sounds ridiculous, but that's the reality of what that piece of legislation means. I do not expect and do not want your medical information. When you run for office, you run on the trust of the people who elect you.

In closing, I ask again, and I hope the members of this committee here — we want to ask you to go back to the Minister of Labour. She can make that decision to extend the hearings so that people across this province can have access to you to tell you the truth of how injuries impact on their lives.

**The Vice-Chair:** We thank you for your presentation.

**Mr Biggin:** There's only one way we can demonstrate symbolically what you're doing to injured workers.

**The Vice-Chair:** No demonstrations.

**Mr Biggin:** In other words, if your government is not prepared to extend these hearings, then all these hearings are gag hearings. You are gagging the people of Ontario.

## COUNCIL OF ONTARIO CONSTRUCTION ASSOCIATIONS

**The Vice-Chair:** We would ask the next presenters to come forward, the Council of Ontario Construction Associations, David Frame and Don Stewart. Thank you for attending today. Could you introduce all the members of your delegation so that Hansard has them on record as well?

**Mr David Frame:** As you said, we're the Council of Ontario Construction Associations. Immediately on my right is Gary Robertson of Nicholls Radke, beside him is Denise Peters of the Denfram Group, and beside me is Don Stewart, who chairs our WCB committee. My name is David Frame, and I'm the executive vice-president of the council.

The Council of Ontario Construction Associations, or COCA, would like to thank you for the opportunity to present some of our views and suggestions on behalf of our members. COCA's direct membership is 46 associations, which in turn represent 8,000 construction employers and their suppliers. We are active members of the Employers' Council on Workers' Compensation and are fully supportive of their earlier comments.

Our WCB committee is very familiar with the long list of shortcomings of the current legislation and has made many recommendations for how those can be fixed. Bill



99 addresses many of these problems. We are encouraged by many of the changes to the benefit delivery model, which address many of the shortcomings of the present future-economic-loss process, and by the emphasis on employer and worker accountability.

We commend Minister Witmer and her staff for the work they have done and we support it, contingent on addressing some outstanding issues.

Construction industry assessment rates have increased over the past four years; they are now approximately 8% of our assessable payroll. A few rates such as masonry and roofing are facing increases of 100% to 120% over a four-year period. Our members are demanding relief from higher assessment rates that are driving costs up and have contributed to five continuous years of negative growth in the construction industry. As an example, the cost of a \$200,000 home has increased about \$3,400 since 1993 and will increase about another \$1,400 if they are required to pay current target rates next year.

COCA has done extensive research to try to determine the reasons for these unsustainable rates and costs. Chart A, as you see, will clearly show that the problems are not being driven by the increased number of lost-time injuries. In fact, in the 10 years between 1985 and 1995, the construction industry has decreased its accident frequency rates by an amazing 63%. Rates have continued to decrease through the last year as a result of a successful experience-rating program called CAD-7 developed specifically for the construction industry. Conventional wisdom would assume that a substantial decrease in accident frequency should produce lower rates, but it has not, indicating a substantial problem in the system.

The most helpful analysis that has been produced for us comes from a comparison of the cost per lost-time injury in the construction industry and that of schedule 1 or most of the rest of the WCB system. We're simply amazed to find that the average lost-time injury outside of the construction industry carries a cost of just over \$13,000, while the cost inside the construction industry is \$34,925, or 261% higher.

The breakdown of what is involved in these comparisons is contained in chart C. It shows that while all costs are higher, the major driver is the pension costs, particularly for future economic loss, which accounts for 51% of all costs in the construction industry. Most significantly, the board's statistics established that injured construction workers are two and a half times more likely to be awarded a future economic loss pension than injured workers in the rest of the system. This, to a large degree, explains why these costs are so much higher in this chart.

Industries and businesses that have been successful in keeping workers' compensation rates down have often done this by successfully returning their injured workers to full employment. The result often is no pension award, no dependency on the board for compensation, and the employer continues to enjoy the benefits of a productive, motivated employee.

The situation in the construction industry is often very different. There is little continued relationship between the contractor and the employees when a contract is completed and work no longer exists.

Some larger contractors have had some success re-employing their injured workers because of the volume of their work. The limitation is that the average size of a construction firm is about five to six employees and the average term of a job, typically, three to four months. We all recognize that this severely limits the likelihood of return to work with the accident employer. As a result, an injured construction worker is much less likely to return to work when fully recuperated than someone who works for a non-construction employer. Our conclusion is that an ineffective return-to-work regulation is at the root of these problems.

#### 1900

In recognition of the problems of the construction industry relative to this issue, Bill 99 proposes some limited exemptions for employers primarily involved in the construction industry in sections 40 and 41. We see this as an important first step to allow the industry and the board to address this problem. Unfortunately, we believe these provisions are not adequate.

Since last November, Don Stewart has chaired a subcommittee on return to work which has explored the options for a regulation to address this issue. We have a working proposal that has been submitted to the board, the Ministry of Labour and the Provincial Building and Construction Trades Council of Ontario for their reaction. That proposal, as a working document, is appended to this submission.

We cannot go into the full details of that proposal today, but we'll summarize it and make recommendations for changes in Bill 99 that are needed for us to go forward with it.

Our research has led us to conclude that the following five issues must be addressed in the new regulation for return to work in construction. They are: (1) 80% of construction workers do not have reinstatement rights; (2) an injured construction worker is much less likely to have a job to return to than the average worker; (3) injured construction workers are 250% more likely to be awarded permanent pensions than other workers; (4) construction workers who are unable to return to the industry have few vocational rehabilitation options; and (5) the current obligations often discourage employers from reinstating injured workers.

Under our proposal, we would like to address what was first done under Bill 162 when the board was given the authority to develop return-to-work regulations. The problem we face is that many inappropriate restrictions remain. Only workers continuously employed for one year by an employer who regularly employs 20 or more workers were covered. In our estimation, this effectively eliminates more than 80% of construction workers. Our experience is that the law cannot be effective when applied to such a very small group.

The law requires that construction employers who have reinstatement responsibilities must re-employ injured workers for at least six continuous months. The average length of employment in construction is three to four months, depending on the project. When the employer has no continuing alternative work, the worker is laid off and, as a result, the employer is fined the equivalent of one year of the worker's salary by the board for not

making the requirements under the current act. It's much easier, obviously, for that employer to claim they are not able to reinstate than it is to be found in breach of the act.

If a successful regulation is going to be developed, the act must recognize the flexibility required by the construction industry that is not allowed by Bill 99 as it is currently stated. The regulation we are advocating for is an industry-based solution. The organized sector uses hiring halls because of the relatively short duration of the worker-employer relationship. Experienced workers are sent to employers based on their trade requirements. When the project is completed, the workers are sent back to the hiring pool for a new assignment. Our current regulation attaches the worker to the injury employer, even if there is no work and all other workers have moved on. That's a disservice to that worker and to the employer.

We propose that if the injury employer has no work available in the worker's trade, he or she must be made available for work with an alternative employer. The law should apply to all construction employers and their employees so that they have similar rights and responsibilities. Bill 99, as it now stands, does not allow for this.

An industry-based solution should require that all participants carry certain responsibilities. We believe it's most vital that the board have a more active role in managing these construction claims. Bill 99 proposes that the board will become involved when it is determined that the worker will not return with an injury employer. In order for timely re-employment to occur in our industry, the board must make a number of determinations early and initiate various processes early. These include an assessment of if he or she can perform essential duties or if suitable work can be arranged with an alternative employer. Failing these, a determination on advisability of a labour market re-entry plan must be made.

With the absence of an accident employer, the board simply must step in to manage the return-to-work process. It's not being managed now, and it's part of the problem. This is fundamental if we are to address the failures of the current system.

To sum up, I'd like to provide you with the following three recommendations. We'd like you to (1) direct the board to initiate a process with labour and management representation that will come together and produce a return-to-work regulation; (2) direct the board to take on the responsibility for management of a return-to-work program in construction; (3) amend section 41(8) of Bill 99, the section that gives some exemptions and allows the board to make regulation for the industry, so that subsections (1) and (2), combined with (4) through (7), which are already in the act, plus the addition of (9), do not apply, giving the full range of flexibility, allowing for the above principles to be incorporated into a new regulation for our industry.

You heard earlier from the construction trades council. From the remarks I heard, I believe they're largely in agreement with these basic recommendations and that the goodwill exists to allow the industry to develop its own solution in concert with the board.

As you can see, this is an important issue. It's the issue we've chosen to focus on today among the numerous issues that exist in Bill 99. We thank you for your consideration, and we would welcome any questions you may have.

**The Vice-Chair:** We have slightly over two minutes per caucus, beginning with the Liberals.

**Mr Patten:** Thank you for your presentation. Every witness or group that comes before us of course has a different vantage point, but I was pleased that, coming from the employer side, you're thinking as partners, you're not just thinking purely in an imbalanced manner, as we had earlier in the day, because it never works in the end anyway. As I'm sure you will agree, your greatest resource is your people who are working for you. Actually, I would concur with that. I met with some of the people from the trades, and I think they feel they've got a pretty good working relationship to work out some of these new arrangements.

I respect that recommendation. I like it, and I think the board would take it. There are two problems with the legislation: (1) whether the government side will listen, because at the end of the day they can outvote the other party members, and (2) whether there's the flexibility to respond to this. Anything that can help the employer and the employees work out their arrangements obviously is a stronger approach than trying to impose something. My worry is that some of the imbalance in this will hurt everybody in the long run. The board may not pay at the end of the day or some of the employers may not, but other people will end up paying in other ways.

We don't have much time, but I just want to say I appreciate that, and you are contrasted with another presentation today that showed no concern, in my opinion, or little concern for the relationship or the plight of people who in fact did get injured.

**Ms Martel:** I appreciate the presentation. We do understand from the brief that was given earlier on from the trades council that in fact they would be amenable to much that has gone on here, so I certainly hope the government will take that under advisement and do something positive with respect to this legislation, at least that part of it.

But I want to ask you something different. I have a real concern about the government's view that workers are the ones who are going to be responsible now for starting a claim. I have very serious concerns about that, the change of that happening from, for example, an employer having to automatically file or a doctor being able to file a form 8.

Frankly, in your industry you have a lot of people who would work on any number of sites, in different geographic locations. You have a large number of people who would be working with unorganized employers. I am frankly really concerned that there will be any number of attempts of intimidation that will be used to force a worker not to file. I really think that's what the end result is going to be. I wonder if you can make some comments on this proposed change. Do you really think it's going to allow workers, especially unorganized workers, the opportunity to file a claim?



**Mr Gary Robertson:** First of all, I think there's no question that the work process does take place outside of what you might consider an employer's home operation. The work takes place across the province. In many cases currently, claims are initiated by other than the employer anyway. It is not a situation where all accidents are reported to an employer. Often, as the case may be, whether organized or unorganized, it is the doctor's first report which initiates the claim. Subsequently there is an investigation for which an employer files the form 7.

1910

I think the process in terms of the worker driving the claim status may clean up some of the difficulties that exist currently, even in reporting accidents. There's going to be a requirement where there's a benefit directly related to the filing of an accident report or a claim by the worker. Whether the worker reports to the employer or to the board, the process can then start to take place and the employer then can subsequently continue with the investigation process to provide additional information.

You've got to remember too that within the industry there is a variety of employer practices. It's not a captive workforce. You're dealing with employees who move continuously from employer to employer. While one employer may have one procedure, another employer may have another procedure, and another down the road. To focus on the worker submitting the report and the claim is driving to the point where the worker is going to reap the benefits directly and therefore shouldn't be making the claim.

**The Vice-Chair:** I'll move to the government caucus.

**Mr Jack Carroll (Chatham-Kent):** I'd like to zero in on the return-to-work thing. Obviously it's a particular problem in your industry. You've done a great job with the frequency of accidents, down 63%. Your assessments are going through the sky. You're suggesting that the WCB take the lead role in the return-to-work issue as it relates to your industry because of the short employment spans and the fact that there are so many different small employers. Representing 8,000 small construction companies or people who are in this industry, what role do you see your association playing in helping to design an appropriate return-to-work mechanism that would work for your industry?

**Mr Frame:** As I said at the beginning, we've spent about six months now working on the issue. We wanted to start early because we were worried that the legislation wouldn't give us the latitude to develop something that was workable, and we've come to the conclusion it doesn't.

The problem we face is, as we talked about the nature of the employment relationship, if that employee does not have an employer to go back to, they're out in nowhere land. As it stands right now, their union isn't necessarily involved in return to work — may or may not be — their former employer may have no work, but they have a responsibility to put that person back to work. So they're probably not working when it's the most important time for them to be working: as soon as they are able to return to work.

We're saying someone's got to coordinate this, and the one constant in all of this is the board. The board should

be aware of the circumstance. Unfortunately, Bill 99 backs away one step on re-employment and says, "It's up to the employer and the worker until certain circumstances are determined." We're saying in our circumstance that's not good enough. The board's got to be on top of it.

We're going to recommend that within six weeks a recommendation or a recognition come from the board that they've either gone back to work, they're about to go back to work or that certain processes have to be taken to facilitate it. This is going to cost more money in terms of board time and board staff, but as you can see in our charts, we're paying out hundreds of millions of dollars more per year because the system isn't working. We're convinced that by investing a little more money into the system at the board, it's going to save a lot more money in the long run.

**The Vice-Chair:** We thank you for your presentation. I'm sorry, our time is up.

#### ONTARIO PUBLIC SERVICE EMPLOYEES UNION

**The Vice-Chair:** I would ask the next presenter, Leah Casselman from the Ontario Public Service Employees Union, to come forward, please. Thank you for taking the time to come out and present today. Could you identify yourself and the other members you've brought along for Hansard as well, please.

**Ms Leah Casselman:** Good evening. My name is Leah Casselman. I am president of the Ontario Public Service Employees Union. With me today are Bob DeMatteo and Robin Gordon. Also in the gallery you will notice — well, perhaps you won't notice, but just in case you were wondering, there are a number of the members of our board of directors here as well to witness the proceedings on Bill 99.

Let me begin my remarks on Bill 99 by saying that once again the Ontario government is showing its true colours. In its ongoing assault on fairness and decency for working people and their families, it is gutting every piece of legislation that protects us. Make no mistake: Bill 99 is part of that shameful legacy.

Bill 99 will slash the benefits of injured workers. It will cut their entitlement to fair compensation for injuries inflicted on them at work. At the same time, it gives enormous arbitrary power over injured workers to employers. It transfers billions of dollars in compensation money that belongs to injured workers to the treasuries of their employers. Yet despite these massive changes which will relegate the victims of employers' neglect to a life of poverty and misery, this government has ruled to restrict open, public debate.

Our membership is appalled by this government's attempt to ram this legislation through the Legislature without full public debate, and on their behalf our union comes before this committee in protest.

It's clear to us that we no longer have democratic government in Ontario. This is not a government which governs in the interests of the greater public good. This is a government that rules the many in the interest of the few. Democratic government is about consultation; it's about ensuring the people have a voice in decisions that

affect their lives; it's about balance and fairness. Such lack of openness only reflects this government's contempt for the public and its real fear that an open debate will blow its cover of deception.

Make no doubt about it: This proposed legislation and the government's media spin is about deceit and deception. In the expectation that if you tell a big lie often enough, the people will eventually believe it, the government has portrayed this legislation in a number of ways. The employers and the government have deceived the public into believing that Ontario's compensation system is in financial crisis. They have perpetuated the lie that employer premiums are placing us at a competitive disadvantage.

They have also engaged in the worst form of victim bashing. They have portrayed injured workers as an overpaid, lazy lot, living off the system, who are probably faking their injuries. They blame injured workers for the WCB's fictitious financial crisis and its impact on our economy.

Nothing is further from the truth. The truth is that the board is not — and I repeat, not — in debt and has not had to borrow a dime in its 80-year history. This is a corporation that showed a \$510-million profit in 1995. It has \$8 billion in assets and has a funding ratio that has steadily risen to 42% of its future liabilities.

#### 1920

The truth is that Ontario's employers enjoy WCB premiums which are lower than two thirds of North American jurisdictions. In fact, if employers were paying what they should have been paying and if all employers in the province were paying into the fund, there would be no unfunded liability.

The truth is that Bill 99 is not about resolving a financial crisis, it is not about positive social change and it is certainly not about prevention. Then what is it really about? It's about allowing employers to get away with not living up to their responsibility for the injury and disease they cause, it's about rewarding them with rate reductions at the expense of workers' benefits and entitlements, and it's about offloading the real cost of workplace carnage on to the taxpayers.

Just where do you think your fellow human beings will go when they can't work? Where are they going to go when their benefits are so reduced that they will be unable to provide the barest necessities of life for themselves and their families? I'll tell you where they will go: They'll wind up on the welfare rolls; they'll be in the psychiatric wards, maybe the one at Sunnybrook if they're lucky; they'll be on the streets; or they'll be in our jails, super or otherwise. It's the taxpaying citizens of Ontario who will pick up the cost of these services and the resulting social programs. The savings from these efficiencies are a deception.

The only people who benefit from this legislation are the employers who are being let off the hook for the injuries and diseases they cause in the workplace. It is they who will gain billions of dollars from this transfer of compensation money.

Since our allotted time is extremely short, I will just be covering a few areas of concern to us in this proposed legislation.

The first one is full compensation. Bill 99 breaks the historic compromise made by workers and employers in 1914. Workers gave up their right to sue their employer for work-related injuries in return for a no-fault system that gave them the right to full compensation for injuries suffered at work. Employers, for their part, were protected from any legal liability for workplace accidents and disease in exchange for fully funding the cost of this system.

With Bill 99 that historic compromise between worker and employer is dead and buried. The Conservative government has come down firmly on the side of the employer. Bill 99 will deny workers' rights, suppress claims, limit compensation and gut procedural fairness in order to relieve employers of their obligations and reward them with rate reductions. Under Bill 99 workers' benefits are under attack from all angles. Benefits will be reduced from 90% of a worker's loss of earnings to 85%. Pension contributions for workers with permanent disabilities will be cut in half so that injured workers are more likely to be impoverished in their old age. The board will have a new discretion to reduce a worker's benefits on the basis of their pattern of employment. Seasonal workers will receive lower benefits regardless of their true loss of earnings capacity.

The most significant attack on injured workers' rights to full compensation in Bill 99, however, is the de-indexing. In the mid-1970s, yet again another Conservative government recognized that without inflation protection the real value of injured workers' benefits was being driven into the ground. Funny, eh? They began increasing pensions on an ad hoc basis with reference to the consumer price index and in 1985 enshrined full indexation in the Worker's Compensation Act.

Bill 99 slashes inflation protection for most workers with permanent disabilities. Many of these workers rely on partial pensions to support themselves and their families. While the change in the indexing formula may appear slight on paper, its impact on these workers will be cumulative and severe. The Jackson report projected that this change alone would deliver over \$9 billion in savings in the next 17 years. In other words, this government is stealing \$9 billion from the pockets of injured workers and using it to cover the cost of insufficient employer assessments. As if this were not enough, the government gives employers a 5% across-the-board rate reduction, which transfers even more compensation money to employers and will only prolong the unfunded liability.

Stress and chronic pain disabilities: The proposed act is particularly vicious in its attack on workers who suffer from stress and chronic pain disabilities. Under the act, these workers are treated with suspicion and disrespect and their rights to compensation are limited or completely denied, regardless of the real merits and justice of their claim.

Stress is a serious occupational hazard which can cause very real temporary or permanent disabilities. Our union represents many of the workers in Ontario who are most at risk for stress-related injuries. Workers in psychiatric hospitals and correctional facilities face dangerously high levels of stress as a result of the number of factors they



have to face on a regular basis: understaffing, overcrowding, insufficient training, shift work, harassment and violent assaults by patients and inmates. Workers in ambulance services who have to deal with enormous human suffering and mangled bodies and corpses are in a constant race to save peoples' lives and work long and irregular shifts.

Under Bill 99, if these workers suffer injuries related to the hazardous levels of stress on the job, they will be denied compensation out of hand. No regard will be paid to the available facts or medical evidence in their cases. The only exception applies to workers who suffer from "acute reaction to a sudden and unexpected traumatic event," probably the introduction of yet more legislation. This is an extremely narrow and complex exception. You can put your claims in now.

There is no guarantee that workers in psychiatric hospitals, correctional facilities or ambulance services won't be denied on the basis that they must expect traumatic events in the course of their employment. Even if workers manage to jump this very severe legal hurdle, their claims will be denied if their stress was caused by "their employer's decisions or actions relating to the worker's employment." This would include assignments, conditions of work, discipline or termination, nearly all the things that cause them stress in the first place. In addition, workers who suffer from stress-related illness as a result of sexual and racial harassment — and I know that's not a high priority — by their employers will be denied any compensation. That may be kind of a sore spot these days, right?

**Chronic pain:** Workers who suffer from disabling chronic pain syndromes will be at the mercy of arbitrary board regulations. Under the proposed scheme, workers who do not heal within the so-called usual time for their injury will be dumped into a pain management program for a maximum of four weeks. Following their participation in the board's quick-fix pain clinic, they will be denied any compensation for health care costs or their loss of earnings. If a worker doesn't qualify for the board's quick-fix pain clinic, their benefits can be terminated immediately.

Chronic pain syndrome and fibromyalgia are medically recognized conditions which can be traced to the original workplace injury. Frequently the result of soft tissue and repetitive strain injuries, they are affecting a growing number of workers. Women are particularly vulnerable to these injuries due to their concentration in small-scale manufacturing and office work. The suffering of these injured workers is real, whether the government chooses to recognize it or not. Chronic pain can leave a worker barely able to move or sleep or take care of their children or their homes. It often leads to severe depression and family breakdown.

While Bill 99 limits or excludes the claims of workers with mental stress and chronic pain disabilities, it does nothing to restore their right to sue their employer. For these workers, the historic compromise of workers' compensation is dead. They have no right to sue and no right to full compensation. As this committee has been told repeatedly, the provisions of Bill 99 on mental stress and chronic pain are clearly unconstitutional. By passing

this legislation, the government is therefore inviting costly and unnecessary litigation at taxpayers' expense, again something you seem to be getting used to.

**1930**

On the return to work, Minister Witmer claims that the proposed Workplace Safety and Insurance Act promotes a timely and safe return to work. In truth, the act encourages employer harassment and coercion of injured workers to return to work before they have healed. This will inevitably result in serious aggravations and re-injuries. Employers are free to make arbitrary decisions on a worker's ability to return to work with limited medical information and no board supervision. Experience rating, which provides incentives for employers to limit the duration of lost time claims by hurrying workers back to work, will simply aggravate the situation.

Under this draconian legislation, workers must cooperate with their employer's demands. If they don't, they could risk having their benefits reduced or suspended until they can convince the board that the employer's actions were inappropriate. This system provides an open season for employers' abuse and harassment of injured workers.

**The Workers' Compensation Appeals Tribunal:** In 1985, the Conservative government created the Workers' Compensation Appeals Tribunal in response to calls from both workers and employers for an independent level of appeal. In its current form, the tribunal holds back the tide of complaints to the Ombudsman and costly judicial reviews.

Since its inception, WCAT has been a highly respected administrative tribunal under the leadership of the chair, Ron Ellis. The government's recent interference with the composition of the tribunal has compromised its credibility. First, the government removed the well-respected and knowledgeable Mr Ellis and replaced him with a Tory government appointee. Then the Premier's office ignored three qualified vice-chair candidates recommended by both the tribunal and the Ministry of Labour in favour of three partisan appointees who have no experience in workers' compensation. Representatives of the labour movement who sit on the WCAT advisory committee have resigned in protest over these blatant political interferences.

This bill undermines the independence of the appeals tribunal and makes a mockery of the principle of procedural fairness. Under Bill 99, the tribunal will no longer be allowed to interpret and apply its governing legislation according to the principles of statutory interpretation and natural justice. In each appeal, the board will dictate what board policy applies. The tribunal will not be allowed to disagree about which policy applies or deviate from any policy, even if it is contrary to the act.

In the past, the tribunal has been an important check on the board's reluctance to recognize new occupational diseases even in light of overwhelming medical evidence. This change, in concert with the elimination of the internationally respected Occupational Disease Panel, shows the government's agenda to halt any progress on the recognition of work-related disease. Clearly the government is more concerned with protecting employers

from the real costs of work-related injury and disease than it is with ensuring workers get treated fairly and decently.

The Occupational Disease Panel and prevention: Bill 99 is not about prevention. In fact, this bill does everything to ensure that prevention does not occur. Prevention needs more than the minister's platitudes. As I just mentioned, Bill 99 abolishes the Occupational Disease Panel. The ODP is an arm's-length research and advisory agency set up to address the relationship between occupational disease and the workplace. It is an area that the Ontario board has consistently ignored throughout its history because of its obvious vested interest in suppressing disease claims.

Over the last number of years, the ODP has made great strides in filling the enormous gap in disease recognition. The quality of its research and findings has won it worldwide respect. More importantly, as a result of its work, it was beginning to have an important impact on prevention, which I thought this was supposed to be all about.

We can't emphasize enough the importance of disease recognition as essential to setting priorities and the development of effective prevention programs. Indeed, as a result of the work of the ODP, we are beginning to see important proactive steps in the area of prevention. For example, research conducted by the ODP showing the relationship between metal working fluids and cancer has led General Motors to adopt a more stringent exposure limit than it was required to by standard. Some other companies have introduced less toxic substitute oils. As a result of the ODP's report on cancer and heart disease among firefighters, employers have taken steps to provide better protection from exposure to toxic substances. The abolition of the ODP will effectively kill this kind of pioneering work in disease prevention.

Finally, our members are not taken in by the minister's commitment to make Ontario's workplaces among the

safest in the world. I think her record pretty much stands on that. Everything we've witnessed so far shows that the government is intent on destroying every health and safety measure protecting workers.

It is difficult, if not impossible, to accept these verbal commitments as a true reflection of this government's motives and intentions in view of the fact that the minister has recently done the following: reduced health and safety certification training requirements; gutted the Ministry of Labour's occupational health program by laying off occupational health nurses and physicians, industrial hygienists, engineers and all technicians and specialist staff; closed the occupational health laboratory and library; and disbanded the toxic substance standard-setting committee. These initiatives have reduced the ministry's capacity to effectively administer and enforce the Occupational Health and Safety Act. They have reduced the ministry's ability to drive prevention programs.

More recently, the minister introduced her discussion paper on an overhaul of the Occupational Health and Safety Act. This discussion paper contemplates the massive deregulation of protective standards, relieving employers of their specific duties to protect workers and abolishing many of the protective rights that workers now enjoy.

In conjunction with the changes proposed in Bill 99, we can only conclude that the government and its supporters in the employer community see workers as expendable Canadians, for in truth these legislative initiatives are a licence to kill and maim workers.

On behalf of the members of my union, the Ontario Public Service Employees Union, I call on the government to withdraw this legislation immediately.

**The Vice-Chair:** We thank you for your presentation. You've timed it quite nicely.

This committee stands adjourned until August 6.

*The committee adjourned at 1937.*









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### STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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Mr Jack	Carroll (Chatham-Kent PC)
Mrs Barbara	Fisher (Bruce PC)
Mr John	Gerretsen (Kingston and The Islands / Kingston et Les Îles L)
Mr Richard	Patten (Ottawa Centre / -Centre L)
<b>Also taking part / Autres participants et participantes:</b>	
Ms Shelley	Martel (Sudbury East / -Est ND)
<b>Clerk / Greffière:</b>	Ms Donna Bryce
<b>Staff / Personnel:</b>	Ms Lorraine Luski and Mr Andrew McNaught, research officers, Legislative Research Service



## Legislative Assembly of Ontario

First Session, 36<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 36<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 6 August 1997

# Journal des débats (Hansard)

Mercredi 6 août 1997

## Standing committee on resources development

Workers' Compensation  
Reform Act, 1996

## Comité permanent du développement des ressources

Loi de 1996  
portant réforme de la Loi  
sur les accidents du travail

Chair: Brenda Elliot  
Clerk: Donna Bryce

Présidente : Brenda Elliot  
Greffière : Donna Bryce



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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU  
DÉVELOPPEMENT DES RESSOURCES

Wednesday 6 August 1997

Mercredi 6 août 1997

*The committee met at 0907 in the ITT Sheraton, Sudbury.*

WORKERS' COMPENSATION  
REFORM ACT, 1996

LOI DE 1996

PORTANT RÉFORME DE LA LOI  
SUR LES ACCIDENTS DU TRAVAIL

Consideration of Bill 99, An Act to secure the financial stability of the compensation system for injured workers, to promote the prevention of injury and disease in Ontario workplaces and to revise the Workers' Compensation Act and make related amendments to other Acts / Projet de loi 99, Loi assurant la stabilité financière du régime d'indemnisation des travailleurs blessés, favorisant la prévention des lésions et des maladies dans les lieux de travail en Ontario et révisant la Loi sur les accidents du travail et apportant des modifications connexes à d'autres lois.

**The Chair (Mrs Brenda Elliott):** Good morning, everyone, ladies and gentlemen, members of the committee. This is a reconvening of the standing committee on resources development for consideration of Bill 99. We're very pleased to be here in Sudbury this morning, and we look forward to the presentations that will be brought before the committee.

**Mr David Christopherson (Hamilton Centre):** Madam Chair, as I did in Toronto at the opening of these hearings, I would like to present a motion. I'd like to read it, if I may.

Whereas there has been overwhelming public interest in Bill 99, which would totally rewrite the Ontario Workers' Compensation Act; and

Whereas more than 1,150 groups and individuals who asked to make presentations before this committee have been refused because the government did not allow enough time to hear them; and

Whereas at least 114 groups and individuals from northeastern and north-central Ontario submitted requests to the committee before the deadline, but there is only time for 21 presentations today;

I move that this committee recommends to the government House leader that when the House resumes sitting, the order with respect to Bill 99 be amended so that the bill can be returned to the standing committee on

resources development for extensive hearings around the province, including more hearing days in northeastern Ontario.

Madam Chair, it's a disgrace that there are only six days to hear a complete rewriting of the Workers' Compensation Act. On behalf of the NDP caucus, I move a motion that would allow us to provide the kind of public hearings that the working people of this province are entitled to.

**Ms Shelley Martel (Sudbury East):** I obviously support the motion that's been moved by my colleague from Hamilton. The government makes it clear by the fact that it only wants six days on the road with respect to this bill that it doesn't really want to hear from the public, particularly injured workers, with respect to how this bill is going to affect them. Let's be clear: With the very dramatic changes the government is making here, all of which are negative, all of which are detrimental, the lives of people who are injured now and in the future will be dramatically changed, and it won't be a positive change.

If the government is serious about finding out how these changes are going to impact on the lives of people who get hurt at work, who are getting killed by industrial disease — unless the government extends these hearings, it will be clear to everyone that once again the government is trying to limit the rights and the benefits of workers in the province of Ontario.

I urge the government to do the right thing and extend these hearings so you can hear directly from the people whose lives are going to be affected the most, that is, the injured workers of Ontario.

**Mr Floyd Laughren (Nickel Belt):** I understand that the motion has already been put and that the committee can't extend hearings right now as we sit here. I believe the intention is for the Legislature to sit from the middle of August to the middle of September, roughly, and then there would be another break for the fall session. So there is opportunity to have more hearings across the province. It's not a question of there not being enough time; there sure is. Historically, there has been a lot more hearings than this government is allowing when there have been major changes to workers' compensation.

The motion by my colleague is a reasonable one. It doesn't suspend the hearings already under way. It allows those to continue and to hear from people who already understand that they're going to be making presentations.



I would urge members of the committee to support this motion.

The government members presumably have nothing to be ashamed of in this legislation. You would want more and more people to see it in the light of day and to speak to it, if you're not ashamed of it. I urge the government members, because that's how the decision will be made, that if the majority on the committee will vote for the motion, we'll get more hearings.

*Interjection.*

**Mr Laughren:** It has to go back to the House leaders. I understand that. At the same time, House leaders are known for saying that committees should set their own agenda. They'd be hard pressed to deny this committee's holding more hearings if there was a motion from the committee that supported that.

**Mr Richard Patten (Ottawa Centre):** I support the motion put forward here. Of course it's been put forward before and defeated each time.

The request is that there are so many groups that have asked to speak to this and don't have an opportunity. I think they should. It seems to me that we can take time. The government is looking at extending special time each day in the Legislature — three hours in the evening would constitute a day, although it hasn't been passed yet — so if it wants more time to spend in the Legislature it seems to me it should take more time to listen to the people.

This has grave impact upon many workers throughout Ontario, especially for those who are injured. It seems to me we'd be extremely wise to allow time and also allow the opportunity for the minister herself to meet face to face with some of the injured workers who have been requesting that meeting for a long time.

**The Chair:** I have reviewed the motions that were made before, on June 25 and June 9, and this is an almost identical motion. I think that it's been appropriate to allow comment on the motion, but I believe the motion is out of order and would require unanimous consent to go forward.

**Mr Christopherson:** Then I would seek unanimous consent, which would be the parliamentary process that would allow this to be in order. With the support of the government members — both opposition parties are in favour — we can give unanimous consent. That would make this particular motion in order and would give effect to the process that my colleague Mr Laughren has spoken about. I seek unanimous consent to put this motion so we can vote for it and give the workers of Sudbury and the other communities of this province a chance to be heard. This is a chance for the backbenchers of this government to stand up and do what's right and stop following, in lockstep, a process your government has set forward that is denying people and is muzzling people. I seek unanimous consent to put this motion.

**The Chair:** Do I hear unanimous consent? No, there is not unanimous consent. We'll move forward.

*Interruption.*

**The Chair:** I remind members of the audience that you are most welcome to attend the committee hearings today. However, this is a standing committee of the Legislature. I believe some of you understand that we are governed by the same rules of the Legislature as would occur if you were at the Legislature at this time. Demonstrations and interjections are not allowed. We are here to hear evidence, to hear comments, to hear advice from presenters.

## SUDBURY CONSTRUCTION ASSOCIATION

**The Chair:** I now call upon the Sudbury Construction Association, Mr Martin and Mr Gatien, to come forward. Good morning, gentlemen. Welcome. You have 20 minutes in which to make your presentation. You can use it as you wish.

**Mr Dean Gatien:** Good morning. My name is Dean Gatien. I'm the chair of the health and safety committee with the Sudbury Construction Association, and past chair of the association. Mr Martin is our executive director and looks after the affairs of our association. On behalf of our 190 members of the Sudbury Construction Association, we want to thank the committee for the opportunity to speak on Bill 99 today.

Our association is made up of general contractors, trade contractors, manufacturers and suppliers in the industrial, commercial and institutional construction sectors. Our association was established in 1948 and has spent the last 50 years representing the interests of the ICI construction industry in northeastern Ontario. Our members have for many years recognized problems with the WCB system and have lobbied for changes.

We are pleased with the principles behind Bill 99 that support a strong role of the board in health and safety that stresses accident prevention and returning injured workers to their workplace. We also support the implementation of the fiscal responsibility that will allow the board to properly insure injured workers into the future. The previous increase in unfunded liability, as well as the formation of the Workplace Health and Safety Agency, were clearly headed towards financial ruin and put the future of injured workers at risk.

Construction has, for the last few years, seen WCB rates increase at an alarming rate. Some high examples are the masonry and roofing sections, which have increased over 100% in the last four years. We feel these increases have contributed to five years of continuous decline in the construction industry and have become a barrier to investment in Ontario. These increases have occurred while accident frequency rates in the province have decreased by 63% between 1985 and 1995. While we do not have regional statistics as accurate, we are making assumptions that there are no serious variables that would significantly vary the results in northern Ontario from the provincial numbers.

Our members believe that part of the decrease in the frequency rates is due to the CAD-7 rating system specifically developed for the construction industry. We also believe that lower accident frequency should result in lower cost, and the current system has failed our industry.

Currently the cost of lost-time injuries in construction is 261% higher than the cost outside the industry. Future economic loss accounts for 51% of all construction costs, and an injured worker in construction is 2.5 times more likely to be awarded a future economic loss than a worker outside the industry.

0920

While we acknowledge our industry has safety risks for workers, we feel we do not have the capacity to successfully return injured workers to work in the current system. Many of our members are small contractors and the length of time working for a single employer is often less than three to four months. Due to this reality, an injured worker is not likely to return to his accident employer. Under the current system there is little incentive for either the worker or the employer to do so.

The current return-to-work regulations under Bill 162 pertain to workers continuously employed for one year by an employer who regularly employs 20 or more workers. This eliminates the vast majority of injured construction workers in this area. Employers who have reinstatement responsibilities must re-employ that worker for at least six months. They cannot guarantee six months of employment for any of their workers. When the employer has no continuing alternative work, the worker is laid off and the employer is fined under the board. It is much simpler to try not to reinstate, and this benefits no one.

We need a flexible industry solution that puts the responsibility on workers, employers, unions in the organized sector, and the board to return injured workers to work in construction. It must be done with the realization that employment will likely be with another employer and may often be in another industry. All parties should be held responsible to develop a plan to make this work. In the unionized sector there is in fact a disincentive for the union to assist the returning injured workers to work, but they are well positioned to find employment meeting the needs of an injured worker returning to work and should be involved in the responsibility for doing so.

Non-accident employers have no incentive to hire returning workers. They should be given some sort of financial incentive or workers in construction will continue to remain on benefits longer than other workers.

We have several recommendations, most made by the Council of Ontario Construction Associations, to allow for flexibility in the construction industry, and the Sudbury Construction Association supports them.

The first recommendation is to direct the board to initiate a process with labour and management representation that will produce a return-to-work regulation. This

must be done immediately as most contracts in our ICI sector expire in May 1998.

The second recommendation is to direct the board to take on the responsibility of a return-to-work program in construction.

The third recommendation is to amend subsection 41(8) of Bill 99 so that subsections (1) and (2), (4) through (7), and (9) do not apply. This would allow for the above principles to be incorporated into a new regulation for construction.

A further recommendation from our association is that we would like to see the implementation of a three-day waiting period similar to New Brunswick. This would reduce the number of lost-time injuries. These are really medical verifications and should not be anything but a first-aid situation, and can become a medical aid, which is the proper progression of a claim.

Our members support the changes in Bill 99 and hope the minister will review our recommendations for changes. There is a deep-rooted belief among contractors that WCB is an out-of-control train that is going off a cliff and we are paying the bill for a system that does not work. We look forward to these and further changes that will respond to our industry's needs.

We wish to thank the Council of Ontario Construction Associations for their assistance in providing some preparatory material for our presentation today.

We again thank the committee for this opportunity. We are prepared to answer any questions at this time.

**Mr Bart Maves (Niagara Falls):** You mentioned that in your sector, in the unionized sector, there's a disincentive for unions to put injured workers back to work. Could you explain that?

**Mr Ron Martin:** The issue is that in construction often the job at which the person was injured no longer exists. Therefore, there is no incentive, because the way the system works, the union is looked down on by the worker to try to put the person back on to that job. There is no incentive for the worker, the employer or the union under the current system to get the person back to work. The job no longer exists in construction most of the time.

**Mr Maves:** When another project comes up, is there not just as much incentive to get the worker back into that project as the project he had been working on that had been completed?

**Mr Gatién:** The difficulty is that we're in a market that is affected by a bidding process. That same employer will not get the next job that is in that industry sector, the headache being that if a second employer goes to the hiring hall and says, "I need a worker of this type of skill," they're not going to send somebody to him who has limitations to do that ability. They want a worker who can do the full skill for them. They don't want to have to look after somebody else's WCB problems. There just isn't any process or system in place to get that worker back in, because he's now assigned to an



employer and that employer, not the industry, has to get him back to work.

**Mr John Hastings (Etobicoke-Rexdale):** How would you structure or model a rapid return-to-work approach, given the realities you outline in the existing construction industry? It's very ad hoc, project to project, or maybe year to year. How do you see such a thing working?

**Mr Gatien:** I would look at it more as a labour pool and a group or classification of employers, and inside that group in that area they have to create a return-to-work and modified work system that everybody participates in, because the number of contractors is high but the number of employees per contractor is very low and the duration of jobs is very short.

The timing of things is difficult and the grouping of people would be much better in bigger numbers, where the union could be the controller of how the person is carrying along. His return to work, his voc rehab, things like that could be pooled inside the control of the union with the support and the interaction of the employers involved. This gets the person back into the industry, not waiting to see if that accident employer is ever going to have a job for him again. It's difficult.

**Mr Hastings:** The cost is then shared by all the contractors in the industry?

**Mr Gatien:** The cost is being shared as it is now, because you get to a maximum limit and the rate group pays for it anyway, so why not be more interactive and more positive and everybody try and get this person back to work?

0930

**Mr Patten:** Thank you for your presentation. I don't know if you have any more copies of it, but we'd welcome having copies.

**Mr Gatien:** We talked to the Chairperson's assistant and said that we would fax a copy to them.

**Mr Patten:** I see some members have them already.

I would like to follow up on this idea because I think it has some merit. One of the problems with any government-operated service is flexibility. You try to tie things down so tight that you can't anticipate the continual wonder of variance with human life, that there is always something new in the circumstance.

The idea, if I understand it, is to provide the best of all worlds for the opportunity for employment, for an injured worker to return to work, and in an industry where you have short-term projects and small employers and sometimes there isn't a good fit with a single individual, a person can be part of a pool ready to go back to work now and there's an agreement on an incentive to hire people from that pool. Is this essentially the idea you're promoting?

**Mr Gatien:** Generally.

**Mr Patten:** What kind of an incentive, though, might you imagine for an employer to take from that pool?

**Mr Gatien:** I don't have any specific details. It's things we're going to have to green-light on and toss around and come up with what a proper incentive is, but if there is none, nobody's going to look at it. What we're looking at is, the person gets assigned to a specific employer and until that employer has a job that meets the limitations of this worker, that worker stays at home. That's of no use to the system, it's of no use to the employer, it's of no use to the worker. The worker, in short order, loses his skill, loses his incentive to go to work, and the employer is paying a large bill on top of the actual costs. You're into the CAD system, the NEER system, and the cost of that rating just skyrockets. We've got to work more as a group to get the person back to work of some sort. The person has a specific skill because he's in a specific sector of construction. Somewhere in that sector his skill is usable, so we've got to get him into a group of employers instead of a single employer.

**Ms Martel:** One of the recommendations you made was a for a three-day waiting period for benefits. You wouldn't be surprised, of course, that I fundamentally disagree with that whole view. I have to ask you your reasoning to support that. You have an injured worker who gets hurt at work. He or she reports that to the accident employer. They go and seek medical attention. It's the physician who orders that injured worker off the job. Yet your premise is that the worker should be denied benefits they are entitled to for the first three days. Why would you put forward such a position?

**Mr Gatien:** My request and background on it is that through the due diligence and the concern an employer would have for a worker, as soon as a person is injured — and what I'm looking at is not critical injuries or serious injuries; I'm looking at minor strains, sprains, soft-tissue injuries — you would normally send the person to medical aid only to verify that the person is okay. A large number of lost-time injuries are three to six days and really shouldn't be lost-time injuries. They should be listed as first aid and medical aid and progress to the lost-time injury based on how the person receives medical attention.

Maybe I can give you a small example. Due to the geographic location of northern Ontario, a person could be working anywhere that is miles and miles away from proper medical attention. It could be he receives a bruise or a strain or something and you want to verify that person is okay. It could be just a cut and you want to verify that is not infected, it's not serious, it's not gone to the bone, it's not gone to ligaments, things like that. You want to verify the person's okay. Normally, you will see that it is a minor injury, the person returns to work the next day, and in three to six days that injury is healed and he's back to normal. The difficulty is that you get into medical aid and automatically then jump to a lost-time injury if the person has to travel to get medical attention and travel back to work again.

So it's not for the critical or serious injury; it's more for the smaller soft-tissue injury. It's a verification that the person's okay. We could be working in a locale such as Sandy Lake or Trout Lake, north of Cochrane, whatever, and it may be a day or two to travel that person around to get medical attention, depending on where you are.

All I'm asking for is the soft-tissue injuries, that the person doesn't miss work but travels to get medical attention, comes back to work again, verifies he's okay. That's all we're looking at. There are a lot of injuries in construction that shouldn't be medical aids and shouldn't be lost-time injuries. It's just escalating the costs of operation.

**Ms Martel:** It sounds to me like you're going to penalize people because of where they work and because of where they're able to seek medical attention. I don't think it's the fault of construction workers or any other workers that in some places in northern Ontario, lots of places, you can't get a physician to deal with you immediately. It seems to me what you're saying — this would apply not only to people in your industry; if it's accepted by the government, it would apply to everyone, regardless of where they seek medical attention — is that because people work in remote areas because they want to feed their families, if they do get hurt and have to go somewhere to get medical attention which takes a day there and a day back, they should lose benefits for that. I can't agree that you should penalize injured workers because they get hurt and have to seek medical attention that's not close to home.

**Mr Gatien:** We didn't say we were going to penalize them.

**Ms Martel:** But you are.

**Mr Gatien:** We said we were looking at the assessment of it.

**Ms Martel:** They lose benefits.

**Mr Gatien:** They're still receiving wages and benefits.

**Ms Martel:** They're entitled to workers' comp, right? They're entitled to workers' comp from the day they go off to try and seek medical attention.

**Mr Gatien:** Correct.

**Ms Martel:** You want a waiting period, right?

**Mr Gatien:** We want an assessment period.

**Ms Martel:** Maybe you'd better define "assessment period" for me.

**Mr Gatien:** They're not losing out on wages or benefits. What we're looking at is the proper process of the assessment and classification.

**The Chair:** I must interrupt. I'm sorry. Our time has expired. Thank you very much, gentlemen, for taking the time to come before the committee this morning. We appreciate your presence.

*Interruption.*

**The Chair:** Order, please. I would remind the members of the gallery that you are most welcome to be

here today, but we must allow for an atmosphere where presenters can come to speak, either in favour of the bill or against the bill, in comfort and in confidence. That's what we are here to do, and we will do it appropriately.

I must inform my colleagues that the presenters from the MacIsaac Mining and Tunnelling company are unable to be with us this morning because of a sudden death in their business.

ONTARIO PUBLIC SERVICE  
EMPLOYEES UNION,  
SUDBURY AREA COUNCIL

**The Chair:** We'll ask if the Ontario Public Service Employees Union representatives are here yet this morning. They are. Welcome. I'm very glad you are here. You have 20 minutes in which to make your presentation, and you may use that time as you see fit.

**Mr Bill Kuehnbaum:** My name is Bill Kuehnbaum. I'm a professor of mathematics at Cambrian College in Sudbury and I've been a member of OPSEU for quite some time. I am not an expert, I'll confess up front, on matters WCB, but because I have been a steward in my local for 25 years and the local president, and have represented workers in all kinds of forums over that period, I have had a lot of experience with the dynamic that takes place between individual workers and their employers.

In particular, I have a lot of experience with observing how unequal a contest it is when an individual employee meets with an employer in a matter outside of the employee's particular area of expertise. One of the many changes in this act is to set up such contests, and I know what the outcome of those contests will be. That's why OPSEU asked to have standing at this particular hearing.

Under the current act, if an employee has not returned to work within 45 days, a WCB case worker is assigned. It's the obligation of the board to get involved with the situation. The case worker is to work closely with the worker and with the employer to ensure that the provisions of the act, in particular those around rehabilitation activities, are lived up to. The case worker can ensure that medical assessments, modified duty provisions and a host of other details under the act are attended to.

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This provision for automatic assignment of a case worker is being eliminated under Bill 99. In its place is being substituted a new set of obligations and concepts which in general form mandate the comanagement between the worker and the employer of the process of returning to work after an injury. Although the board under Bill 99 "may" monitor the progress of the return to work, it would no longer be required to get involved unless the dispute between the employer and the worker is identified. Although Bill 99 is permissive, we know that because of staffing levels at the WCB this permissive aspect would probably never be taken up by the board.



"What's wrong with this kind of comanagement process?" I can hear some people asking. "What's wrong with two parties working together, the employer and the employee, to bring about a return to work unencumbered by outside monitoring? If they reach an impasse, they call in the board. What could be neater?"

This theoretically elegant approach may work when the parties are relatively equal in authority and knowledge, but this is not the world of the injured worker. The worker is not the equal of the employer. That's the nature of the relationship in the workplace. The worker may have a great knowledge about the particular set of skills or the job that the worker is hired for, but the worker's knowledge about rights and obligations under the act will be vastly inferior to the employer's. Most employers either hire an agent to advise them on how to conduct themselves under the act or have employees in the personnel area whose sole job is to do this kind of work. That's an extremely unequal contest between the worker, whose life is not involved in interpreting the act, and the employer, who has expertise readily available to advise them. The worker is not equal to the employer in this particular situation. As a result, workers will systematically not access features of the act that would benefit them. They will systematically miss or avoid notifying the board that there is a dispute.

How can I make that kind of statement so categorically? I have some firsthand experience in a situation very similar to what's being proposed under the act.

In the 1970s I chaired a bargaining team that negotiated the contract for the community college teachers. One of the issues in that bargaining was the assignment of overload, or overtime, to teachers and the compensation that was attached to that overtime. The union wanted a premium rate, as is the standard for overtime pay, and the employer insisted that many teachers preferred alternative forms of compensation — maybe more vacation, maybe some kind of preferred or lighter workload later in the year. The compromise agreed to in that set of bargaining was that teachers could refuse an overload assignment. They had the absolute right of refusal of the assignment if the college would not offer compensation that the teacher thought was fair.

I thought at the time — and I negotiated this agreement — that you couldn't ask for a better system. The teacher and supervisor discuss the situation together, and if they can't agree on compensation, the teacher walks away from the extra work. This is exactly parallel to the WCB concept except that the injured worker doesn't walk away from the extra work. The injured worker would have to walk over to the board and say: "There's a dispute going on here. I need your help."

What happened in the colleges under this theoretically perfect system? Virtually all overload was compensated with money, and the majority of that was at less than straight time. Up to 15% or 20% of the teachers in some colleges taught overtime for free: zero dollars per hour

overtime. Even though teachers talk for a living and their supervisors are seen for the most part as peers, unlike your average workplace, when teachers went one on one with their supervisors, they came out with the short end of the stick even though they had the absolute right to refuse the assignment.

You may say they're stupid or they shouldn't be so dumb in their own personal bargaining with their employer. Maybe that's true, but this is the dynamic in the real world when an employee, no matter who it is, gets in a one-on-one situation with the employer. There is total inequality of power. It's an unequal contest. If teachers in the situation I described came out with the short end of the stick, as I know they did, I know that the parallel system at WCB, as proposed under Bill 99, will have even worse results. Bill 99's comanagement and non-assignment of a case worker will provide more dismal outcomes for injured workers because the contest is even more unequal than it was in the college system.

This bill takes plenty away from injured workers as it is. The non-assignment feature guarantees that many injured workers will not access even that which is left. If this has been done inadvertently, then you must change section 40 to reinstate the mandatory assignment of a case worker. If it has been done on purpose, you ought to be thoroughly ashamed.

**The Chair:** We have nine minutes remaining for questions, three minutes per caucus.

**Mr Patten:** Thank you for your presentation. I appreciate your thesis. My wife is a teacher and, as you know, teachers put in a heck of a lot of overtime for which there is no compensation. It happens in many areas.

I agree with your model. Without some kind of arrangement, I don't think the board can simply say, "All right, workers and employers, work out an arrangement here that will be satisfactory for a safe and healthy work environment." Your thesis is that that's not an equal relationship. Where that does happen — and it does happen — you have a more enlightened employer, but in far too many cases it probably wouldn't and it doesn't, so I agree with your analysis of that.

Your solution is that the existing arrangement of the case workers — that their role should be maintained and strengthened. It seems to me that the legislation takes away some of the previous roles and responsibilities and says that we want to see a stronger work environment, but there's no commitment to any resources to be put into that. It's almost laissez-faire: "We trust you. Go ahead with things and we'll see what happens."

Other than the case worker, what else would you recommend to strengthen that particular role of the board?

**Mr Kuehnbaum:** There are going to be lots of people coming on behind me who are experts in WCB who will give you advice on that. My only area of expertise in this is in the example that I gave you. I know what happens when you have this theoretical comanagement — "We'll

negotiate an acceptable solution" — and that takes place in a closed forum where you've got the worker and the employer. I know that is going to fail under this system. Well, not fail; it depends what your objectives are. If your objective is to make sure that a whole truckload of workers who have entitlements under the act don't receive them or will not receive them, then you've set that up. But if your objective under the act is to ensure that what is in the act is availed by injured workers who are entitled to those benefits, then you can't have this system of negotiation and comanagement; you have to have the board involved from the beginning.

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**Mr Christopherson:** Bill, thanks very much for your presentation. We appreciate your coming out today.

I want to pick up on the last point that was mentioned in terms of the board having to become involved, that leaving it up to the concept of comanagement is bound to fail, based on the lack of balance of powers within the workplace. It's interesting that most of the employer groups that come in talk a lot about the cooperation and the partnership this bill provides, yet almost everybody who comes in representing the workers involved is saying exactly what you're saying. At the end of the day, a very clear picture starts to form in terms of who the winners and losers are.

I don't think you can say it too often. I'd like to hear you once again talk about the fact that the workplace is not a place of equal power. The workplace is not where democracy reigns. There are clear powers that some people have over others, and that means that the board stepping back is giving those getting even greater powers under Bill 99 more control. Could you elaborate a little more on the kind of day-to-day situations or a scenario you can imagine where that power shift will work against the interests of working people?

**Mr Kuehnbaum:** Anybody who has worked for an employer and needs to work to get the money to provide for their families always has hanging over their head that the employer can deprive them of income. Most employers don't set out to do that, but that's always at the back of every employee's mind. Every day when you go into work your employer gives you direction on where to go and what to do. The whole relationship between an employee and employer is that the employer has much more authority and directs the employee's operation, what they do. That is the dynamic of the workplace, and it does not change as soon as a worker becomes injured. It would be nice if, as soon as a worker became injured, they would wake up in the morning and say, "Now I'm superman and I am the equal to the employer and I'm going to go in there and, in terms of my behaviour, throw off all my training and all my experience with respect to the person who is my boss." But that's not how we work.

I challenge anybody around this table to tell me that on occasion, when they've gone up against their employer on any issue, from when they're going to get

their vacation to — those of you in caucus who have gone up against Harris, don't you have a bit of a knot in your stomach when you do that? Well, that's the same knot that every worker has when they try to contradict their employer on anything.

**Mr Christopherson:** It's too bad neither Gary Carr nor Toni Skarica are here to answer that question for you.

**Mr John O'Toole (Durham East):** Thank you very much, Bill, for your presentation; an interesting perspective, as a math teacher. I can read the reports. I suspect that in your background checks you probably have too. The auditor, Erik Peters, in several reports has stated that there is a serious concern with the unfunded liability. You're a math professor. Do you think this is some kind of fantasy, or do you think that somehow there's just an endless amount of money?

**Mr Kuehnbaum:** No. Although I did take one actuarial course in university, I found it too hard and did not continue, so maybe I'm not the right one to talk about actuarial concepts, but liabilities do have to be funded, just like pension plans. I know when my pension plan fell into arrears, or whatever the technical term is, we worked out with the employer a way of bringing it back to being funded properly. That was not done totally at our cost; that was a negotiated settlement between all the people involved in the plan. If the employer had come to us and said: "This is your problem, folks. We're taking it all off your pay. You're the ones who are going to pay for this unfunded liability even though you didn't have any responsibility for managing the money in the first place," we would have objected mightily to that. That same objection applies to how you're going about eliminating what is alleged to be the unfunded liability.

**Mr O'Toole:** You made an assumption, Bill, that I found — you're a member of a very large union, the Ontario public service, probably larger than the employer in many cases. It is collective strength, if you will, the Samson and Goliath kind of thing, big versus — this is the class struggle thing that you're putting on for us here.

*Interjections.*

**Mr O'Toole:** Could I have a little order? Thank you.

The thing is that the vast majority of employers are small employers. The vast majority of the construction industry, the people who just spoke before you, are small businesses, sole proprietorships. Probably 85% of employers are small. Are you aware of that? You really have to look at the ability of small employers to sustain employment. Do you want an environment where there's no room for the small employer, for the entrepreneur?

**Mr Kuehnbaum:** The premise behind your question is that the current costs of WCB are driving small employers out of business and away from Ontario and that therefore the only way to get at the unfunded liability is to somehow take it out of the workers' hides. That's a premise that is not supported by fact.

**Mr O'Toole:** I'm not disagreeing with you, Bill. I'll stop now, because I'm not sure you were listening. In



your presentation you characterized all employers as big and bad, overpowering the small employee. That is not the case whatsoever, unless of course you're a member of OPSEU or a large union, and then you see this confrontational approach.

Anyway, I appreciate your presentation and look forward to more of them in the future.

**The Chair:** Thank you very much, Mr Kuehnbaum, for taking the time to come before the committee this morning.

#### ADVOCATE FOR INJURED WORKERS OF ELLIOT LAKE

**The Chair:** I now call upon Mr Joe Virth. Good morning. Welcome. If you would introduce your colleague for Hansard, please, you have 20 minutes in which to make your presentation.

**Mr Joe Virth:** My name is Joe Virth, and my colleague is Judy Burgess, from Elliot Lake.

I'm an injured worker. You people all can speak beautiful English. I'm surprised some of you people don't even understand what the heck we're talking about. We're talking about compensation. These gentlemen just talked about injured workers, 80% of the people, small construction, how good they are. Look at my hand. Do you see my hand? I was told by the small contractor, "If you go see the doctor or go on compensation, you will be fired." Do you have any note of that, sir? I don't think so.

Second, I'm deaf. Do you know what my children and my friends call me? A loudmouth bastard. Do you know why? Because I'm deaf from mining injuries, from contractors, sir. There's your proof again — working for the Algoma mines. At that particular time, if you asked for safety and health, they gave you two choices: Put up or shut up.

I'm not so educated as you gentlemen here, I'm sure; I've only got grade 6. But you don't need to be a scientist to figure out that you people want to get blood away from the mosquitoes, blood they've already sucked away from the poor people. All I'm trying to tell you people is that Bill 99, if you go back in history God knows how far — when you have governments spending millions of dollars opening casinos making billions of dollars, why don't you open one of those casinos to go to the injured workers and leave their pay alone?

I lost half of my clothing allowance. This is how I have to walk. I've got blisters all around my ribs. I don't need any pity. It's my fault partially, probably. I was too stupid and worked hard. But I wanted to work hard for my company. I'm the most discriminated-against person because I'm hurt, and now my government is discriminating because I'm hurt. I'm deaf, I'm bloody well crippled, and I can say I'm dumb too.

How can you people just go home and relax and make a complete decision like that? We've got so many people — I'm talking about immigrants. You don't even know how they lost their money. You don't. You keep cutting.

How much more do you want to take? You want to go from 90% to 85%. I believe it was like that in 1958 or 1959; you want to go back to 1959. The cost of living is going up, but not ours. We're going to stay back. Eventually we're going to be just like the rest. Let's take a hat and go to the streets in Toronto and beg for extra money because I want to have a nice pair of shoes for my wife.

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I don't make too many long stories. I can't make a nice speech, period, just what's in my heart. All I ask the honourable members here is to make an honourable decision so you can sleep at night. You were elected by the public for the public, to work for the public. This is the way we were taught in my school where I come from. Your responsibility is to the public, to do the work. Don't take away the money we have. You know the cost of living is going up.

Look at Chrysler company. The guy makes \$20 million a year. I'm making a lousy \$22,000. Is he that much smarter? I don't know. He can't be, because without the worker he's a nobody. You still need us idiots there to push the buttons or whatever you want to call it. Automation will come and you're going to put the workers right outside? Sure, the industry would like that very well. The automatic machine doesn't need oil, it doesn't take vacations, it doesn't get hurt. If it gets hurt, scrap the bastard. But unfortunately, human beings get hurt, human beings trying to do work.

Anyway, that's all I'm going to say to this committee. Thank you very much for listening to me. I hope to God that you have compassion enough — and I'm not using any party — to understand that we're not just a bunch of suckholes that want to live off the system. We can prove it. I can prove my problems and many other injured workers can show to you what happened. I've talked to Shelley Martel many times about people who were turned down. I have a lady who has been operated on three times for her back. They tell her to be ready to go back to work; she can't even walk. Who makes these kinds of decisions? Anyway, to make the story short, I thank you very much. I'll let my colleague do the rest of the talking.

**Ms Judy Burgess:** I'm totally unprepared for this. Mr Virth asked me to speak and it was yesterday before I could prepare anything. I'm with the injured worker advocates in Elliot Lake. We have already sent in our submission. It's a written submission; I have some copies here. I won't be speaking on it today because there's not enough time. But I would like to read something. I want to get across the message that this committee should speak to more injured workers and listen to injured workers, so there's something I have to read.

Mr Virth is a prime example of what is happening with injured workers. A lot of the injured workers I deal with and help on a daily basis cannot read or write English. A lot of them are illiterate, especially in the northern communities. It's just unbearable. They come in

and they're crying. They lose their wife, they lose everything they have, because they're on workers' comp and they can't get the money to them fast enough. They end up on social assistance.

I'm asking you people to come to a meeting in Elliot Lake and speak to the injured workers. There are probably over 600. We also have people coming from southern Ontario to Elliot Lake because the housing is cheaper. They can't afford to live in southern Ontario any more. That's all my message is.

**The Chair:** Thank you. That leaves us with almost four minutes per caucus; we'll begin with the NDP.

**Mr Laughren:** I must say that you need not apologize for having grade 6. You present your case extremely well. We don't need high-priced, meter-clicking lawyers here to make a presentation when you can do it as well as you do.

I must say that if there's a blight on the employer community in this province, it's headquartered in Elliot Lake. The history of Elliot Lake is disgusting, absolutely disgusting. I won't speak ill of the dead, but there weren't many tears shed when Stephen Roman left this world.

In my constituency office, workers' compensation is still the number one problem. We get a lot of family support problems as well, but workers' compensation is still number one, and I suspect that's true in most northern Ontario constituency offices. I know Elliot Lake doesn't have the industrial base, the mining base it once did, but I suspect that what's been left there is wreckage from the mining industry. I wanted to ask you, what kind of organizations are in place there now to look after injured workers' problems? You have an MPP, but —

**Ms Burgess:** We have the OWA.

**Mr Laughren:** They have an office there?

**Ms Burgess:** Yes, and the injured workers' advocate's office, North Shore and district. We actually go almost all the way to Sault Ste Marie and to Manitoulin Island, so it's a big area.

**Mr Laughren:** You still have problems with the retired folks, or people like Mr Virth who might not be retired if he was healthy.

**Ms Burgess:** Yes. There are people who come in every day who can't read, can't write, and they're too proud to admit that. It's really hard to get it through their head: "It's fine. Come in to the office. I can help you, type a letter for you. You sign your name to it. I'll help you." It's hard to educate them any further on WCB issues, and with Bill 99 it's going to be worse.

**Mr Laughren:** Yes, there's no question it's going to be worse. I thank you for helping out, and Mr Virth for coming before the committee. It's important that people who are themselves victims make appearances before this committee, and that's why we appreciate very much your presence here today.

**Ms Martel:** Let me ask this question: Like my colleague from Nickel Belt, I have a full-time person who

does nothing else but WCB. That's been the same since I've been there, for 10 years; it was the same for 20 years before that when my father was the MPP. The government, when it talks about this bill, likes to say it gets lots of people who have to deal with workers' compensation and it's a real problem. They somehow, by saying that, suggest that what's in Bill 99 is going to fix the problem and help those injured workers. Can you tell me — you're an injured worker, you represent injured workers — do you see anything in this bill that's going to help injured workers?

**Ms Burgess:** No, and adding time lines to appealing and stuff like that — especially in a community like Elliot Lake, there are so many injured workers and there are going to be more, obviously. They're all commuting and they're all coming from southern Ontario. I deal with people from all over the place. They're coming to Elliot Lake because it's cheap to live. I don't see anything. How are we going to deal with all these people? How are we going to help them all?

**Mr Virth:** The other point is that — I'm talking about my group of people, which is Sudbury too — a lot of people are afraid to confront the compensation board: "I'm going to rock the boat and I'm going to get cut off." This seems to be the situation or criterion. These people are afraid. Now you're putting something else on. You give the company an inch, trust me — just like insurance companies, they charged you at one time \$50 a year for life insurance. Well, you're paying for life insurance now, and a cost of living is involved too, and you're paying almost \$2,000 a year. You think the company's going to stop? You give him an inch, he's going to stop? You take the safety of it, they'll do like they did to me, "You put up or shut up or get out, and kick an empty pop can because you're a bum." They can't say "foreigner" because then maybe you can sue. But you can't do that. This is what honourable members have to realize. You're creating so much of a conflict here, so much authority, to other people.

If you like the businessmen, go for it. You got elected I suppose by the businessmen, or by who I don't know. But we will have to come down somewhere, a synchronized line that at least both sides can be happy and walk decent like a man instead of call it PR or whatever. That's it.

1010

**Mr R. Gary Stewart (Peterborough):** Sir, thank you for your presentation. I've been involved in the business community for a long time with a lot of different companies and I've never yet ever heard of them saying, "Either put up and shut up or get out."

**Mr Virth:** Excuse me. Can I answer that?

**Mr Stewart:** This may happen in the north. Maybe it does happen. Also I believe, if you would just listen for a second, that there seem to be problems on both sides, and I have difficulty with that, when everybody constantly points fingers at the other person. I suggest that what we



should do is, when we point a finger, we should do it while we're looking at the mirror; that's the number one thing.

The other thing is that the priority of this legislation is safety and prevention. Do you not think that should be a major priority? Your condition now: If the concentration had been there, instead of compensation, maybe things of your experience would not have happened.

**Mr Virth:** Sir, I'm surprised. I don't mean to insult you, okay?

**Mr Stewart:** It's not a problem, sir.

**Mr Virth:** But I'm surprised you got elected when you talk like that. I'll you something, when you go, as a small businessman, you're going to look at dollars and cents. You said you've never come across a situation like that down south or wherever you come from, I don't know, but you definitely don't talk to too many people either, then, maybe. I don't think so.

Listen, I can bring you here a hundred people, hundreds, and not just northern Ontario. My friend died; he worked down south. He was still fighting the compensation board for lousy carpal tunnel, and he's dead.

**Mr Stewart:** You're right, sir, but I can also bring you some of the other people the other way as well.

**Mr Virth:** Just a minute. Let me finish.

**Mr Stewart:** Shouldn't we have cooperation, sir, between both sides?

**Mr Virth:** How can you get cooperation if the other side has been done before the 1960s?

**Mr Stewart:** We can't if we keep pointing fingers.

**Mr Virth:** I don't want to point fingers.

**Mr Stewart:** Good, that's my point.

**Mr Virth:** What did I just say to you? Let's synchronize, sir. Let's put everything in the middle. Let's just don't take blood from a stone; take a little bit from the fat people.

**Mr Stewart:** I agree with you 100%.

**Mr Virth:** That's what I said.

**Ms Burgess:** Why can't we have the standing committee come to Elliot Lake and speak to injured workers? Why can't we have it? That's who you should be speaking to.

**Mr Stewart:** You're probably right.

**Ms Burgess:** I'm not "probably," I am right.

**Mr Stewart:** Why shouldn't we go to every other town in this province? You're probably right.

**Ms Burgess:** Well, then, do it.

**Mr Stewart:** It's called a cost factor because many of the groups are presenting the same thing in each one of the cities.

**Ms Burgess:** Because you have to be paid to do this, is that why?

**Mr Stewart:** I'm sorry?

**Ms Burgess:** Is the cost factor because you have to be paid to do this?

**Mr Stewart:** No, we don't get paid to do this.

**Interjection:** Oh, yes, we do.

**Mr Stewart:** Indirectly.

**Ms Burgess:** Yes, you do. I don't get paid for half the work I do. I don't get paid for it, but some day I may be an injured worker. That's why I'm fighting the cause.

**Mr Stewart:** We all could be.

**Ms Burgess:** That's right, and that's why you should be listening to the injured workers.

**Mr Stewart:** I think that's what we're doing.

**Ms Burgess:** No, you're not. You're not listening.

**Mr Stewart:** We're here. I probably meet with the injured workers in my riding at least once a month.

**Ms Burgess:** You're not listening, though.

**Mr Stewart:** We are listening.

*Interruption.*

**The Chair:** Order, please.

**Mr Patten:** I want to thank you for your presentation today as well because, as is obvious, it's the people who have to deal with the results of changes in legislation who are most affected in their lives and in their families, so I listen very carefully to what you're saying. The committee might not go to Elliot Lake, but you might invite the minister to go and see first hand and understand the history of that place and what happens to people.

**Ms Burgess:** Okay, because it is a different area.

**Mr Laughren:** Or the parliamentary assistant.

**Mr Patten:** Or the parliamentary assistant as well.

The government members say the priority of the legislation is health, safety and prevention. In my opinion, I don't believe that really is the priority, because essentially what it does is it cuts rates for employers and cuts benefits for workers; it makes it more stringent for people to qualify for compensation, makes it more difficult. I also appreciate that you need to provide supports to help people get back to work, but it seems to me there's an element here that's to force people back to work almost regardless of the condition they're in, and that the employer is still in the driver's seat on this one.

**Ms Burgess:** That's right.

**Mr Patten:** I wish that weren't the case because there should be an increased accountability. In all honesty, there's a little bit of it, but I don't think it's enough on the employer to really share with the workers the responsibility for a safe workplace.

If you had to change a couple of things in this legislation — and the reason I ask you that is that we would want to scrap the whole thing. However, it's not going to happen. We have to deal and we have to argue and debate and at some point go through each of the points in the legislation. If you have now or if you would like to share with us later, we'd appreciate your comments. Pick out those things that you think are absolutely crucial that we should change.

**Ms Burgess:** I handed in my submission.

**Mr Patten:** It's in there, is it?

**Ms Burgess:** Yes. It was on chronic pain. That was a big one for our board and for the injured workers in Elliot Lake.

**The Chair:** On behalf of the members of the committee, thank you for your heartfelt and sincere presentation this morning.

### SUDBURY COMMUNITY LEGAL CLINIC

**The Chair:** I'd now like to call upon Mr Copes from the Sudbury Community Legal Clinic. Good morning, sir, and welcome.

**Mr Terry Copes:** I welcome the opportunity to speak to the committee this morning. I know it's a very rare honour, given the large number of groups that wished to speak to the committee and the small number that actually will get the opportunity to do it.

I have been doing workers' compensation for over a dozen years now. I must say I've seen changes through the years — first Bill 101, and then Bill 162 and then Bill 165 — but Bill 99 takes the cake. It's a complete change. We no longer have a workers' compensation system under Bill 99; instead, we move to what essentially becomes an insurance system for employers.

No longer is compensation of injured workers the primary purpose of the legislation, and this represents a real break with the historic compromise which was made with injured workers back in 1914. At that time injured workers gave up a very valuable right, a right to sue their employers for the devastating effect of injuries caused by the employers. In return, they thought they were getting the security of a no-fault system where at least they would get something if they were injured at work.

What should be recognized here is that by giving up the right to sue, in effect they gave up the right to get fully compensated for the effects of injury, because I can tell you that the results of most litigation for the kinds of injuries I see coming through my office would be many times the amount of money that injured workers get through the workers' compensation system. It might take longer, it might be a more expensive process, but they would get a lot more.

But in return they did get the security of a no-fault system and some guarantees that they would get some compensation, and also that they would have the opportunity to be rehabilitated back into the workplace. This act removes that.

For example, for certain types of injuries you don't get compensation. For workplace stress you don't get compensation. Why? Who knows why? Because employers are afraid of possibly being held responsible for the consequences of their actions? Why is there any rational reason to discriminate based on the kind of injury? The basic principle should be that an injured worker gets compensated for a workplace injury regardless of the type of injury. As long as they can show causation, they should get compensation.

The same applies to chronic pain. The act in effect removes chronic pain, and it does it in a very subtle manner by giving the board the power to regulate it away. I don't know. Was the government too afraid to

just say, "No compensation for chronic pain. We'll just leave it to the board"?

I've seen the draft regulation which has come out. It's a very interesting regulation because, on the one hand, it recognizes that chronic pain is caused by workplace injury and says, "You get compensation for a period of time while you undergo a treatment program." But as soon as the treatment program is ended, you're off benefits regardless of whether the treatment program works.

There is no proof that treatment programs for chronic pain work. I'd say that about 70% of the injured workers I deal with have chronic pain or fibromyalgia. They have been through tons of treatment and simply aren't getting any better. There's no rational reason to say, "Once you've been through the treatment program, you're out the door and tough luck." It's merely a way of saving money for employers and also removing from employers the financial consequences of those workplace injuries.

### 1020

If one says that workplace safety is one of the primary purposes of this act, how on earth do you promote workplace safety if you remove from one of the parties, the party that causes workplace injuries, the consequences of their actions? That doesn't promote safety; that promotes increased workplace accidents. I've heard a lot of talk here that safety and prevention are one of the primary purposes of this act. Where are the provisions in the act which promote safety and prevention? They aren't there. Eliminating and watering down organizations in the province which deal with workplace safety, such as the independence of the disease panel and also the workplace health and safety organization; does not promote workplace safety.

Simply putting it in the name of an act doesn't promote it either. You have to look at the guts of the act and what it does. As I say, this act essentially is about insuring employers for the consequences of their actions. It's interesting. In effect, what the act does is change the Workers' Compensation Board into a big insurance company for employers. With private insurance companies, say in the auto or house insurance field, if you get insurance through them and you're dissatisfied, you can sue, and it's governed by the principles of contract law and there are definite rules out there which courts enforce.

In this case, what does the act do? In plenty of places it says the board can make the rules. You can appeal to the appeals tribunal, but guess what? The appeals tribunal is now bound by the rules which the board makes. The board becomes a big insurance company which gets to make its own rules, and there's no accountability for those rules. The rules can contradict the legislation. You can appeal, but it doesn't matter, because the board gets to make the rules and the appeals tribunal has to enforce the board's rules. What can you do? You can go for a judicial review through the court system. It's very



expensive, and all it can do is say, "Yes, it's contrary to the legislation," and go back and make a new ruling. It really removes accountability. The board becomes accountable only to itself. Given the past record of the board, I'm not sure we really can trust the board to govern itself properly.

Another major concern about this legislation is what it does in terms of vocational rehabilitation. The key to getting injured workers back into the workplace is effective vocational rehabilitation, because in the case of serious injuries, a lot of injured workers simply cannot go back to the kind of work they were doing before. For a lot of injuries, a simple one week off, that's not a concern. But for the serious injuries, the only way of restoring the injured worker to some dignity is to get them another job and to retrain them for another job.

In the past, the board hasn't done a particularly good job of doing this, but at least they had the power to do it. The Workers' Compensation Act specifically lays out that the board has the duty to assess the injured worker early in the process and to determine what appropriate vocational rehabilitation is, and lays out the steps which can be taken to do that.

This new legislation removes all that. It removes the whole concept of vocational rehabilitation and replaces it with something called labour market re-entry. I don't know what labour market re-entry really means, because the act doesn't define it. The act also doesn't say what you do to achieve labour market re-entry. What it says is that you can take whatever steps are necessary.

On the one hand, that sounds pretty good. You figure it's wide open, and if you don't like what the board does you can go to the appeals tribunal and say, "These are the necessary steps to get me back in the workplace." But what do you run into? You run into the same problem again. As long as the board has made policy, you're out of luck. The board can make a policy the day after this legislation is passed that every injured worker enter the labour market immediately and has to go find a job with no retraining. If that's their policy, that's what the injured workers are going to be stuck with.

The act should lay out specifically a right to vocational rehabilitation where it's necessary and flesh out what that right is. Where can we look for some appropriate wording for that? The current act. Restore that, because that is really a key.

The act also totally abdicates any kind of voc rehab, because the board isn't going to provide it; the board is given the power to ship it out someplace else. The board itself can just wash its hands of any responsibility for rehabilitating injured workers.

Do you know what's going to happen? There are going to be these labour market re-entry plans, they're going to fail, and what's going to happen? They're going to say the injured worker isn't cooperating. Currently when that happens, the effect on the injured worker is simply that they may lose some supplementary benefits,

but under the wonderful wonders of Bill 99, there are no supplementary benefits. What happens is that you can lose all your benefits. That's riddled throughout the act. The injured worker does what the board says, or in some cases what the employer says, or else. What is the "or else"? The "or else" is that you lose every cent of your benefits. That is atrocious coercion on injured workers.

They talk about balance and negotiation between employers and injured workers. Well, the injured worker is going in there with a gun stuck to his head and is told, "You do what we say, you negotiate with us on our terms, or your benefits are cut."

Of course you can appeal it, but the appeals may take years, and in the meantime where do the injured workers end up? They end up on social assistance. That's really what happens here, because the bottom line for a lot of this stuff is that it's downloading injured workers on to the social assistance system and is shifting responsibility from the employers to the taxpayers of the province.

At what cost? It's more than just the cost of the actual compensation for the workplace injuries, because unless you get the injured workers back into a job they can do, and do effectively, you've got other costs. What happens is that they sit at home, they get increasingly frustrated, and you have their families break up. You've got other costs there. You also tend to have a lot of injured workers ending up very frustrated, depressed; some of them end up suicidal. So you've got the additional health care costs in the mental health system. In the end, we all end up paying for this. It is a downloading on to the taxpayers from those who should truly be responsible: the employers.

There are a couple of other points I'd like to make, minor points about a few of what I consider drafting problems which affect even the intent of the act.

I notice, for example, in terms of survivor benefits, that the definition of "spouse" has been removed from the act. It says a spouse is entitled to survivor benefits, but, at least in the first reading version of the act, "spouse" wasn't defined anywhere. I think there's a need to define that somewhere; otherwise, there are going to be all sorts of problems.

### 1030

Another problem I noticed with the first reading version of the act is in subsection 14(5), which appears to eliminate entitlement for survivor benefits for survivors of injured workers who die of silicosis. The provision in the act first of all states that an injured worker doesn't get benefits for silicosis unless he can prove that he's had exposure for two years in Ontario. Then it goes on to say that the survivors of such injured workers are not entitled to benefits. I think the intent was probably there that unless the injured worker could show the two years' exposure, the survivors weren't entitled, but the way it currently reads, it seems to preclude any entitlement to the survivors of silicosis.

Another real problem I have with the act is that in many places it puts a positive obligation on injured workers to report a material change in circumstances. The problem is that nowhere in the act is a "material change in circumstances" defined. It creates an obligation on injured workers to report something, but they can search through the act until the cows come home and they aren't going to find what exactly they have to report. Given some of the consequences of not reporting a material change in circumstances, to be fair to injured workers it's important that that be included in the act.

Another problem in the limitation section of the act — I'm not really in favour of limitation sections, but I don't have time to deal in detail with that — is that the limitation periods seem to run from the time decisions are made by the board, not from the time the injured worker actually learns of that decision. That can be a real problem. I've run into many cases where the board will make a decision; then the decision will go in for typing of the letter to an injured worker. It can be several weeks between the time the decision is made and when the injured worker finds out about that decision. When you're dealing with a 30-day limitation period in the case of labour market re-entry plans or return-to-work problems, that can be a real problem, because half your limitation period may be gone before you learn of the decision. A fairly simple change that can be made is to make the limitation periods run from the time the injured worker or the employer, in the case of decisions which affect employers, learns of the decision.

Also, there is a problem in that while an appeal being put in has to be in writing, there doesn't seem to be a corresponding obligation on the board to put its decisions in writing. I know that most board decisions do end up being in writing, but it may be advisable to specify that the decision has to be in writing. Once again in terms of determining the limitation periods, it's very important that they start to run after a certain event for the injured worker, or the employer, as the case may be, which would be that they receive the decision in writing.

I also think there's a real problem with limitation periods in the sense that there is the obligation that the appeals be put in writing. With a short limitation period, particularly the 30-day limitation period — an awful lot of injured workers are not literate, cannot put together a written appeal. It can be awfully tough to find representation for injured workers. What representation there is is overloaded and swamped. Most places that do represent injured workers have very lengthy waiting lists, and by the time an injured worker can find that representation and find someone who actually has the time to sit down and put in a written appeal for the injured worker, the limitation period may have expired. That is a real concern, particularly for the 30-day limitation period dealing with disputes over ability to return to work.

**The Chair:** Mr Copes, thank you very much for your presentation this morning. Unfortunately, there is no time for questions.

#### UNITED STEELWORKERS OF AMERICA, DISTRICT 6

**The Chair:** We'd like to now call upon Mr Seguin from the United Steelworkers of America.

**Mr Homer Seguin:** Thank you, Madam Chair, members of the committee. Before I start, I want to remind everyone that the workers' compensation system has been built on the premise that he who causes pays. It gets at the question of hiding.

In addition to that, Honourable Mr O'Toole, having spent four and a half years on the WCB board of directors and having the knowledge of how the unfunded liability operates, I know it was caused primarily by the Progressive Conservative government exacting pressures to force the board to not meet its criteria for the unfunded liability over the years. The records speak to that. In the four years I was on the bipartite board of directors, we enacted administrative savings that, along with the NDP legislation, have resulted in over \$1 billion in savings over the last three years — no thanks to the current government, because they haven't put in their changes yet.

With that backdrop, the government's track record in ramming through anti-worker, pro-employer legislation manifests itself in Bill 99. Initially, I thought a meaningful presentation would be a waste of time, since the government has repeatedly demonstrated its unwillingness to listen and to amend its proposals when proven bad-spirited and wrong. However, health and safety compensation and true prevention are so important that I have decided, in the faint hope of the government listening, to attempt to persuade the government members to argue for much-needed amendments to Bill 99. We know the opposition parties agree this is required already. Therefore, I begin by thanking the committee for this opportunity to speak for true fairness and true prevention.

Before proceeding, let me briefly refer to my credentials in this field. I have 46 years of active experience in health and safety and accident prevention, 31 years of active experience in workers' compensation and occupational disease, four and a half years as a member of the board of directors of WCB and nine years as a member of the ODP. I have international recognition in these fields, having attended and presented at numerous world forums.

Labour Minister Elizabeth Witmer is repeatedly quoted, on behalf of the government, as saying Bill 99 emphasizes accident and disease prevention. All my experience screams that this is absolutely an incorrect statement. How can you prevent accidents and disease by reducing benefits and cost-of-living protection, or by providing access to employers of injured workers' medical records? How can you prevent accidents or disease by making it more difficult to file claims,



reducing time limits for appeals or making return to work to fair jobs more difficult? How can you prevent accidents or diseases by changing the name of the WCB to the Workplace Safety and Insurance Board? This proposed name change effectively removes "health" from the name, but hiding health doesn't prevent diseases. How can you prevent workplace stress simply by outlawing benefits for stress?

All of this is horribly wrong, contrary to prevention, and mean-spirited. I urge the government to respond to our demands for fairness and meaningful prevention.

Occupational disease: Although I view the foregoing, and more, as vitally important, I know these issues are well covered in many presentations. Therefore, I propose to concentrate most of this presentation on the government's proposal to eliminate the ODP.

How can you prevent disease by eliminating the independent ODP and returning its duties to the WCB, which botched its responsibilities for occupational disease for 70 years, from 1915 to 1985, when the ODP was born?

The facts are clear and speak decisively. In its 11 years of existence, the ODP has exposed more occupational diseases and their causes than the WCB did in its 70-year history. Are we nuts, to propose a return to such a horrible track record, or is this a deliberate plan to prevent disease from being exposed?

1040

There are no proposals in Bill 99 for disease prevention, not one, so why should we expect prevention when the bill eliminates the one bright spot, the ODP?

In 1993, 53% of accepted claims for workplace deaths were because of diseases. This horrible statistic is despite the fact that less than 4% of the claims filed were for diseases and despite the fact that experts say we are only compensating 10% of the true picture.

In 10 years the ODP has investigated and issued 18 reports on occupational disease, identifying 28 distinct work-related diseases. In most reports, the ODP identified the probable causes of such diseases. Regrettably, in some workplaces, such as all hardrock mining — nickel, gold and uranium — the ODP found that workers were exposed to so many carcinogens that it was impossible to positively identify one as the cause. It is very likely that the cause of the excess lung, nasal, laryngeal and stomach cancers found in mining are the result of a carcinogenic cocktail which the ODP did identify and which has killed literally thousands and thousands of northern Ontario miners.

Prevention: Before prevention is possible, the problem must be identified. The ODP was established for this very purpose, and its track record is impressive. See their 10-year report, some copies of which have been filed with you.

Two more 1997 reports, in addition to the ones mentioned, have been forwarded to the WCB for action, and have been buried. The most recent identified a horrible four-to-five-fold statistically significant increase

in laryngeal cancer in this very city, in Inco and Falconbridge Ontario mine and mill long-service workers, and a two-fold increase in Port Colborne Inco nickel refinery long-service workers. Remember Inco.

The ODP reports have triggered prevention, if you want prevention. The JOHC committee — Inco and the Steelworkers — have placed the ODP reports of excess cancers on their priority list for action. Falconbridge and Local 598 CAW have reacted similarly.

North American mining and labour have formed a working group. This committee's primary goal is the elimination and/or major reduction of carcinogenic oil mist and diesel exhaust fumes; Inco and the Steelworkers and CAW are prominent players.

Following the ODP identifying radon as one of the carcinogens in gold miners' excess lung cancers, the Ontario government enacted a non-uranium-mine regulation as a protective precaution for Ontario mine workers in 1993.

Following the release of the ODP 1995-96 reports identifying oil mist as the carcinogen causing excess cancers of the larynx and esophagus in auto workers, the CAW and three Ontario auto giants negotiated protective standards in their 1997 collective agreement. That's prevention.

Following the release of the ODP 1994 firefighter disease report, many fire stations are known to have put prevention to work; for example, eliminating diesel fumes in firehalls.

In 1992 the WCB, acknowledging an IDSP 1988 report, added asbestosis and mesothelioma to schedule 4 of the WCB regulations, thus positively enhancing workplace prevention.

Following years of USWA and NDP pressure, culminating in a health and safety strike in Elliot Lake in 1974, the Progressive Conservative government established a royal commission to investigate mining. The commission made 117 recommendations, including major ones about changing our approach to occupational disease.

In the next 10 years, the royal commission on asbestos and the Weiler report on WCB disability both recommended the establishment of an independent occupational disease authority and criticized the WCB's disastrous track record on occupational disease.

The Jackson review of workers' compensation had no criticism of the ODP's work and therefore failed to lay a foundation for the elimination of the ODP.

The ODP's budget, averaging about \$1 million per year, certainly cannot be considered excessive, particularly if one considers the fact that only three prevented disease victims more than pays this budget.

Only two letters recommending the elimination of the ODP were sent to the government, and guess who one of them was from? None other than Inco Ltd. This is the same Inco where the ODP reports identified large, statistically significant workplace excesses in 1994, 1996 and 1997 reports of lung, nasal and laryngeal cancers.

Prior to these reports, Inco was a supporter of the ODP. What do you think has changed?

In our view, Inco's recommendation is self-serving, immoral and profit-motivated. It is an attempt to prevent compensation for occupational diseases in its workplaces and to prevent the ODP from studying its workplaces. Inco knows that the WCB historically did little about occupational diseases in its workplaces and wishes a return to the old "do nothing" system.

Even the Ontario Mining Association, the umbrella organization for all Ontario mines, supports keeping the independent ODP. The OMA writes, "The OMA continues to believe that an external, scientific advisory body is necessary to provide the science/medical based, expert, independent and objective advice required for the board in determining a relationship between disease and work."

Since the OMA speaks for all mining on these matters, Inco's contrary recommendation should hold little weight and be viewed for what it is: a self-serving refusal to acknowledge the disease and death carnage its workplaces have caused and are causing. Falconbridge joins the list with Inco. Their energy would be better spent in cooperative disease prevention activity.

The OMA believes the current composition of the ODP is not scientific enough and should be replaced, but the OMA does not agree to fold the ODP into the WCB.

Who supports the ODP? While only two corporate organizations support the Bill 99 proposal to eliminate the ODP and fold its duties into the WCB, over 1,500 letters or other forms of written support to maintain the independent ODP structure have been received by the government and/or opposition parties.

A large number of the supporting letters and petitions are from disease victims or their survivors, from union and local union officials, from health care providers, from university researchers and disease-related educators. Many are from other countries, from high-ranking health care and government officials.

Harry Hynd, director of District 6 Steelworkers, in his brief to your committee, says: "Through the work of the ODP there was hope for survivors to have their claims recognized. Bill 99 eliminates the independent ODP and in turn eliminates the hope for widows or the diseased workers."

Gord Wilson, president of the Ontario Federation of Labour, says in part: "The panel has saved the WCB millions of dollars in expenditures by identifying the relationship between disease and the workplace. By knowing the cause, we have been able to prevent future diseases from occurring."

Although time does not allow a proper demonstration of the written support for the ODP, a small sampling, with partial quotes, is set out below and is included in the appendix in full text.

Buzz Hargrove, president of the CAW, writes, "The Occupational Disease Panel has done outstanding work in occupational disease research."

Kevin Conley, compensation officer with the Steelworkers Local 6500, writes: "Minister, integrating the ODP into the WCB will be a grave injustice to all. The ODP will lose the ability to release their research to the public, becoming another bureaucracy lost in the shuffle of the board."

Four senior officials from the University of Quebec in Montreal, all highly qualified — they're listed — say: "The mandate of the former IDSP was to provide high-quality, independent, scientific evidence to inform policymakers, and they frequently succeeded in achieving this. It would be unfortunate to lose this resource since it will be hard to replace. We hope you change your mind."

Dr Melissa A. McDiarmid, MD, associate professor, Occupational Health Project, University of Maryland School of Medicine, formerly the chief medical officer of the US occupational safety and health, OSHA, writes:

"I am well acquainted with and have been impressed by the work of the ODP. It is well known that 'prevention pays,' and the work of the ODP has been a work largely of developing prevention solutions for the province's occupational health problems. Failure to keep the ODP's doors open will be seen as a clear and deliberate step backwards in the eyes of the public health community worldwide."

1050

Dr David H. Wegman, MD, professor and chair, plus eleven other highly qualified professors from the Department of Work Environment, University of Massachusetts, Lowell, USA, write:

"Several of us have worked with the panel over the years and have always been impressed at the extremely thorough and rigorous way they have approached the difficult and often contentious task of determining the work-relatedness of disease. The integrative research reviews of the scientific literature developed by the panel are highly regarded and often cited by the international occupational health community. We hope you will reconsider your decision and maintain this highly regarded and valuable institution."

Janie Gordon, chair, occupational health and safety section, American Public Health Association, writes,

"The ODP has promoted prevention through conducting scientifically sound investigations and review. We urge you to reconsider the elimination of this panel which has provided wide-reaching benefits to public health in North America and throughout the world."

Dr Jeanne Beauchamp Hewitt, RN, assistant professor, School of Nursing, University of Wisconsin, Milwaukee, writes:

"The ODP and the policymaking process for workers' compensation received well-deserved recognition for its process by being published in this most prestigious of occupational health journals (the *Scandinavian Journal of Work and Environmental Health* 1995). I found the commitment of panel members and staff to scientific



standards to be impeccable. In addition, the panel's chair, Ms Nicolette Carlin, and the staff have been among the most efficient and industrious of government agencies (or private agencies) with whom I have ever worked. I hope you will reconsider this decision based on the benefits of the ODP to Ontario and its citizens."

Ms Jane Cornelius, RN, president of the Ontario Nurses' Association, writes:

"Within a short period of time the ODP has carried out invaluable research and investigation into causes and contributing factors of occupational diseases. As you know, it was the inherent conflict between the goals of the WCB and the goal of increasing knowledge, and ultimately, compensability of occupational illness, that led previous governments to create the ODP, a neutral arm's-length scientific agency for the investigation of occupationally caused diseases. It is the ONA's view that this conflict of interest continues to exist and that the elimination of the ODP will be a significant setback in furthering knowledge about relationships between work and occupational illness."

Finally, a quote from Dr Jan Muller, world-renowned scientist and epidemiologist who headed the Ontario government's epidemiology mining studies for 30 years. He writes:

"I sincerely hope the WCB will act on your report and the families of gold miners will receive compensation.... I am deeply disturbed by your statement that the government has ordered that the ODP cease operation as of December 31, 1996. Is this the way to create a good business environment, or do we want to transform the province into a developing country or province?"

Summary: An objective review of the facts clearly demonstrates the following:

(1) Prevention of accidents cannot be enhanced by cutting injured workers' benefits, outlawing work-related stress or disabilities, or making claim filing or appeal processes more difficult for injured workers. Giving employers rebates and more control of return-to-work and claims processing may hide accidents but will not prevent them. In fact, these changes will cause more accidents, not less.

(2) Outlawing or restricting illness claims only hides WCB numbers but does not reduce illnesses. In fact, these changes will cause more illness, not less.

The rest is a summary which I want you to read, but to allow some questions, I want you to turn to the last paragraph on page 20. If I could get your attention, Madam Chair, it's kind of important that you listen since this is supposed to be the process.

**The Chair:** I know where you are, sir.

**Mr Seguin:** This is a critically important matter. Literally speaking, if the government stubbornly proceeds with the elimination of the ODP and some of the other proposals as proposed in Bill 99, in the face of the overwhelming contrary evidence, the blood of innocent disease victims will be on your hands and on your record.

I plead for a reconsideration of all the above and for the health and lives of potential disease victims whom your decision will impact upon. I thank you for listening.

**The Chair:** Mr Seguin, thank you very much on behalf of the members of the committee for taking the time to come before us this morning.

**Mr Seguin:** There's still time.

**The Chair:** Not according to my watch, sir.

#### EMPLOYERS' ADVOCACY COUNCIL, SUDBURY CHAPTER

**The Chair:** I now call upon Mr Ron Ker from the Employers' Advocacy Council. Good morning, sir.

**Mr Ron Ker:** My name is Ron Ker. I'm the provincial policy chair for the Employers' Advocacy Council and I'm representing the Sudbury chapter of EAC today. Accompanying me at the table is our executive director, Sherri Helmka. A list of names is on the inside of the cover of our presentation. We certainly thank the committee for allowing us to have the opportunity to address you today.

As you can see, our document is quite detailed and comprehensive and covers a number of areas of Bill 99. It is our intention today to just address a couple of issues, as some of these other issues will be expanded upon at other locations on your tour.

Briefly, for those who may not know, the Employers' Advocacy Council is a non-profit, volunteer organization for employers across Ontario. Our mission is to reduce employers' workers' compensation costs by influencing constructive change to workers' compensation in Ontario and through the education of employers in all aspects of workers' compensation and workplace health and safety.

We have over 1,700 members in nine regional chapters across Ontario. Of course, Sudbury is one of our chapters. Our members include a broad section of Ontario's economy. We have small business owners, right up to major employers, including public sector employers in schedule 2. For the past 12 years the EAC has been presenting the views and concerns of the employer community on workers' compensation issues.

To give time for questions, I'm going to move on. Essentially today, in the brief time we have, I want to talk about entitlement, the definition of "accident" and the board policies that are associated with Bill 99.

First, on the entitlement issue, it is the position of the Employers' Advocacy Council that if the entitlement issue is defined and redefined, we would have a system that would function as Sir William Meredith envisioned in 1914. Employers should not be held responsible for diseases of ordinary life and conditions associated with aging, stress or chronic pain. It is our view that if the entitlement issue is resolved we would have a system with limited appeals, and certainly a less adversarial and controversial system, a system that future governments would have no need to intervene in.

1100

At page 3 of our presentation, on the definition of "accident," despite our support for the reform process, we are disappointed that the government did not redefine the definition of accident. We are cognizant of the government's concern that a new definition could cause greater uncertainty and generate litigation. The EAC remains resolute that the government may miss its opportunity to fix the system by failing to act on this issue.

The EAC proposes that section 2, subsections 1(a), (b) and (c), remain as proposed and that the following be added: "Benefits are payable where the employment is the predominant cause of injury or illness."

EAC proposes that chronic pain be redefined and included in the Workers' Compensation Act.

We further propose that the time restrictions be articulated within the act. The EAC supports the Nova Scotia model, and it's attached as an index to our presentation.

If the government sees fit to make work a predominant factor before WCB benefits are issued, then section 12(2), the presumption clause, could be eliminated.

As an aside, the EAC strongly supports section 12(4) on stress, the proposed changes in the act.

Just a couple more comments on chronic pain: The EAC proposes that chronic pain be defined and included in the act. We further propose that the Nova Scotia model be followed — see appendix C — regarding section 13(2): "Extent of entitlement; specified time periods. (2) The benefits to which the worker is entitled for chronic pain are subject to such limits, specified time periods and exclusions as may be prescribed."

It remains our opinion that chronic pain should not be compensated. We believe that pain that persists beyond normal healing times or extends to other sites of the body without any apparent reason is difficult to link to a workplace incident due to its multicausal nature.

To summarize the entitlement issue, the government should fix the system, and the major fix is the definition of accident, from which flows all other parts of the act. You fix the definition of accident, you tighten the whole system up and everybody knows the rules of the game. Right now somebody that you hire who is 50-plus years old comes to you with chronic disc degeneration. If they bend over to pick up a pencil and they have an onset of pain at work, this kind of claim is compensable, where the real problem is that the person has a disease of life, major disc degeneration of their back. Why should employers and the system pay for diseases of life?

Certainly, if you make work the predominant factor, the employers' request for second injury enhancement fund relief would fall significantly. That's where all the requests received come from, because the employers argue the injured worker had a pre-existing condition which was prominent, which was aggravated by the incident at work. If the accident definition is changed, the number of claims would drop, and certainly the number

of appeals would drop. All those people such as myself who live off the system would also drop and disappear.

With a clear definition of accident there would be a simple decision tree; ie, does the medical show that it's a major pre-existing condition? Is it really a disease of life? There are cases where workers actually have had heart attacks at work and they've been compensated because the heart attacks came on at work. Certainly the employer wasn't responsible for hardening of the arteries or the preconditions the individuals had when they had their heart attacks at work. This is the kind of situation that runs up the unfunded liability and cost to the system.

If we're going to follow the private insurance model, certainly with a new definition of "accident," this would make the board operate more like an insurance company. The rules of the game would be clear to all stakeholders. They would know what is a claim, what isn't a claim and when to turn to WCB and when to turn to their private weekly indemnity or LTD programs.

The other issue I'd like to briefly talk upon, and I think it's absolutely important and major, is the board policies. We look at this draft act and everybody in this room can read the words and basically understand it, but as one of your presenters said this morning about the labour market re-entry plan, "What is it?" There's a whole bunch of things in our presentation, you'll see whole parts of the act — the words are nice, the section is nice, but what does it mean? What it means is that the board will be putting policies in place that the stakeholders will have to follow. As of now, other than the chronic pain draft policy and the return-to-work form, there has been no consultation on the board policies.

With a complete rewrite of this act there's going to be a comprehensive reissuance of all kinds of board policies to go with the new language. I understand that in the back rooms on Front Street somebody may be working on these things in anticipation that the act passes. We have a real concern as employers but also as representatives on the other side for workers: How do you administer this act without the policies in place prior to implementation or proclamation January 1? January 1, 1998, is the date that we all want this on board; the government says, "We want it to go."

I would put to you that unless there's consultation on all the policies and the stakeholders — the employers and the employees — have a chance to look at the policies that are going to follow up the act, and secondly, that unless the adjudicators who are going to administer these comprehensive changes to the act have copies of it and have comprehensive in-house training on the application of the new policies, you're going to have a disaster come January 1998. If you think you've got a lot of appeals now, you're going to have a hell of a lot more from both sides of the fence unless the policies are out there and understood and the stakeholder parties have an opportunity to make submissions on them.



As an aside, in the draft Bill 99 there is no provision that allows the stakeholders to take improper or questionable policies to the board of directors. There is no mechanism to file a complaint with the board saying, "This policy on application of subsection 32(f) is really improperly drafted and doesn't recognize the main theme of that particular section."

In conclusion I would really like to say two things: The government may be missing the opportunity to fix the system, but really the number one thing is redefining the definition of "accident," or else you're going to have, even though there are limits put on WCAT under this bill, a continuing expansion of the definition of "accident," and you've got this moving playground here and that all the parties don't know where we're at, that what is allowed today is denied tomorrow. That really should be addressed, in my humble opinion. Also the policies should be consulted on significantly prior to implementation. I would be so bold as to say that if the policies aren't in place, if the NEL adjudicators, initial entitlement adjudicators, are not all trained up on the policies and we've had the opportunity to consult on them, I would say delay the proclamation of the act until the policies are in place, because how do you administer claims without the policies?

Thank you. Hopefully I've left time for some questions.

**The Chair:** Yes, you have done just that. Thank you. There are just over two minutes remaining per caucus; we'll begin with the government caucus.

1110

**Mr Hastings:** Thank you for coming in today. Under your submission, the part dealing with the labour market re-entry plan, I find the approach somewhat rigid in terms of how you define "cannot return to regular work as a result of the injury." I would like to know whether, in your proposal that the labour market re-entry plan be limited to 18 months, that's for every type of work, because a lot of work would require sequencing, to me. It suggests to me there's a great deal of rigidity here in terms of dealing with your alternatives, rather than flexibility, if you look back on what the Sudbury Construction Association had to say about the nature of the workplace from their perspective.

My final comment: You'd limit it inclusive on a one-time basis. Does that mean then that somebody who utilized it, went back to work in a different situation, same company, under your proposals and got reinjured in a separate, different accident, could not qualify ever again under this proposal? Because that's what it implies.

**Mr Ker:** Let me just say where this is coming from in the employer community. I've been involved as a consultant in claims administration for 25 years, from the employer perspective. What happens is that a worker gets injured legitimately, no argument. They go out for a period of time, rehab and whatever, and it's obvious they can't return to their regular work, so we retrain them. The

worker says, "Okay, I want to be a locksmith," and that's agreeable with the WCB rehab, so they put him through locksmith school for nine months, six months. "I don't want to be a locksmith any more; I want to be a cake decorator or a baker." "Okay, we'll put you through that school for the next two years." "Oh, I don't like that. I think I'd like to be a computer operator." This is what has happened. You get two and three and four cracks. We're saying fine to labour market re-entry, but come together on what training you're going to do and you get one crack at it. You can't keep going from one to the other.

**Mr Patten:** Mr Ker, thank you for your presentation. You've done a fair amount of work in here and I look forward to actually going through it. You've only addressed a few points.

I agree with you that the legislation is not specific enough on its definition of "accident" and that there should be some further consultation. We strongly agree with you that there should be some further consultation, before the act is presented for third reading, on the policies that will guide the board itself.

I would like to ask you if you would agree with the thesis of the previous presenter, Mr Seguin, which he documented very strongly, that from the employer's point of view the case has been made that the Occupational Disease Panel has saved money and is in a position, over the long haul, to save us all money if we can identify what you identify as the root causes. If we can identify those root causes, everybody wins. Would you agree that therefore it's vitally important that that panel maintain the independence it has had heretofore?

**Mr Ker:** The EAC has a lot of employer groups. We canvass our members and we take direction from them. Certainly our membership in EAC strongly supports retaining an independent scientific ODP panel. There are chemicals that have been around for years, and employers recognize that over time God knows what can happen and what diseases flow from them. The problem is the famous cases where you have people who work in a bad environment who also smoke four packages of cigarettes a day and come up with lung cancer, and you get into that debate. We really feel that you need that kind of scientific panel to separate the habits of life and what could be the industrial causes of disease.

**Mr Christopherson:** I believe that was an endorsement of the ODP.

**Mr Ker:** Yes.

**Mr Christopherson:** I'm pleased to hear that. Some of your comments I don't agree with, but I think any voice from the employers' side that we can have added to the others that are there to support and defend the ODP is welcome.

I'd like to focus just a moment on your support of eliminating any kind of claim for work-related stress. We heard from the Canadian Mental Health Association

during our hearings in Toronto, and they said very clearly:

"We believe strongly in the need for legislation that accepts that workplace stressors can and do cause psychological disability. As long as this concept is ignored, most people who suffer from psychological disability directly related to stressors in the workplace will be forced to rely on unemployment insurance, social assistance, long-term disability insurance or other government-funded, disability-related programs. The result is that costs are simply transferred from one compensation system to another."

I believe on the same day, or certainly the next, the Ontario Psychological Association said this: "In situations where workers have developed psychological disorders as a result of cumulative occupational stress, they should be treated the same way as those who develop medical conditions." Dr Ruth Berman is the executive director of the Ontario Psychological Association. I asked her very directly, "Is it scientifically and medically possible to distinguish between stress-related causes that are personal versus work-related?" She said absolutely clearly, and it's in the Hansard for anyone to look at, "Yes, that can be done." In light of that, sir, how can you maintain a position that says work-related stress ought not to be compensated for?

**Mr Ker:** When the stress first came up a couple of years ago, we did extensive research on the issue, as an employer group and with other employer groups. While you may have one doctor support that you can separate workplace stressors and family or outside stressors, there is a body of other psychologists and psychiatrists who say you can't. You're dealing with a very difficult issue that somebody is definitely stressed out. Is it a combination of work and family problems? Who's to tell? Who's going to play God and say 75% of your current mental health is due to your work and 25% is family-related or outside-related? It's a very difficult call. The science isn't there. As I say, our major theme is if the work is the predominant factor. Now, if someone can prove down the road that their mental breakdown was 90% related to their work, then you might get the employer to buy in. But it's very difficult. You can go to two different psychiatrists. The famous case is the guy who shot the President in the States. He had four psychologists who said he was nuts and four who said he was sane. It's a very difficult thing.

**Mr Christopherson:** Madam Chair: I think you're going to rule that my time has run out.

**The Chair:** Yes, time has expired.

**Mr Christopherson:** Then on a point of order, I would ask that in light of the fact that this presenter's evidence is different and conflicts with evidence we've had before from the Ontario Psychological Association, I'm sure my colleagues on the government side and on the opposition side would appreciate if you could table

those bodies of work, because that does fly in the face of evidence that Dr Berman gave.

**Mr Ker:** We'll do that.

**The Chair:** Thank you very much for coming before us this morning.

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## SUDBURY AND DISTRICT CHAMBER OF COMMERCE

**The Chair:** I now call upon representatives from the Sudbury and District Chamber of Commerce. Welcome and good morning.

**Dr José Blanco:** First of all good morning, ladies and gentlemen. My name is José Blanco. My colleague with me is Debbi Nicholson. We represent the Sudbury and District Chamber of Commerce, which has about 1,100 chamber members in this district. She is the executive director and I am a member of the board.

First of all, I'd like to commend you for the initiative to seek our input. I'd like to give you a bit of history and then make some suggestions.

We have been quite interested in issues related to workplace safety and workers' compensation because we believe throughout this time that workplace safety and workers' compensation are one of the vital signs of business and industry. When the vital signs of business falter, then our advanced industrial base may be at risk and our quality of life and work will be at risk with it.

The vital signs were not good in 1995 when we first made a presentation to the royal commission. At that time the anticipated deficit was about half a billion dollars and the unfunded liabilities were growing at an unusual rate.

We believe that Bill 99 includes key strategic objectives to restore workers' compensation to financial health, an essential one; to emphasize injury prevention; to speed the return of the injured employee to useful work and to set up proper working definitions and remove inequities; and finally, to encourage worker and employee self-reliance. Those are sound strategic objectives, and therefore we believe that on that basis Bill 99 should be a good basis to work from.

To be successful, however, workers' compensation, has to focus on removing perceived inequities and on improving the quality of the service it provides to employers and employees. Perceived inequities and distrust in the workplace will get in the way of the entire responsibility system. In the absence of solid working relationships, there is a risk of missing the point on decreasing the number of injuries and the severity of those injuries.

It is equally important for WC to improve the quality of the service it provides. It is important for employers and it is important for employees. It is essential that the workers' compensation staff know they are providing what is an essential service to the province and that they also have the tools they need to do that job.

The second part of our suggestions has to do with focus. Although improving the workplace injury and



severity is a long-term endeavour, not a short-term initiative, there are ways to gain time. One of those ways is to focus on the activities, the areas, the groups, the specific areas that have the greatest problems. The workers' compensation has a good inventory of data by injury type, activity type, work sites, whatever.

It can be used in two ways. One is to provide the basis for sound statistical analysis that would enable focusing on the areas where the problems are the greatest. The second is to use those precise local experiences to tailor the initiatives that are supposed to provide the help that is required to make the improvements.

I want to also talk to you about one area that is of great concern to us, that is, the very small business, as compared to what normally gets defined in the province as small business. The very small businesses, which we arbitrarily label as those that employ one to 20 people, are very important to us in the north. There are, for example, in Sudbury about 70,000 people working, roughly. At most, about 25,000 are employed by large organizations in health care, education, hospitals, Inco, Falconbridge. That leaves about two thirds of the total employed by about 6,000 employers, which means an average of about seven employees per employer. It is indeed very small and it normally falls out of the provincial statistics.

This is consistent with the data the federal government obtains in terms of GST. About 80% of all GST registrants have less than \$200,000 annual revenue, and that suggests that 80% of all those are indeed very small.

Because of their size and approach to business, they depend almost completely on workers' compensation. They need it working even more than the larger industries may need it. Unlike larger employers or organized labour, the smaller employers do not have the resources to deal with workers' compensation issues. In northern Ontario this is particularly important to us because, as you also know, resource industries cannot be taxed by our municipalities, which makes our communities almost completely dependent on the direct contribution of the small and very small businesses.

For a small business, a serious injury or illness could be devastating. One person out of 10 is 10%; one person out of five is 20%. No business can actually deal with a catastrophe such as 20% of the workforce finding themselves in dire need. This merely highlights the importance we give to proper health on the part of the workers' compensation system for small business.

Workers' compensation must find ways to help the very small and small enterprises to reduce the number and severity of injuries and to quickly restore the injured worker to full employment.

Our recommendations, in sum, would be that workers' compensation system adopt the explicit mandate to strengthen the internal responsibility system, especially for very small and small businesses and for their employees; that workers' compensation adopt internal

targets and provide the training required for its employees to deliver quality service and customer satisfaction so that it becomes a responsive and effective insurance provider; that workers' compensation study the statistical injury and severity data available to them to better focus their activities; and that the workers' compensation use the actual incidents and the experience of the safety agencies to tailor the programs to work with the groups in greatest need.

We believe that adding our recommendations to your agenda will help workers' compensation to focus its initiatives where the need is greatest, to tailor its interventions so it becomes more effective, and in that way to make strides towards eliminating workplace injuries, improve return to work, remove inequities and impediments and foster employee and employer self-reliance.

We should learn to see safety incidents and workplace health-related issues as defective outcomes which are exceptions to the quality of performance in the workplace. By improving workplace safety, which is a vital sign, we will reduce suffering, reduce costs and improve quality.

Our submission includes the results of a recent focus session with members of the chamber. We have provided you that information, both as a list and as a map. We will be following your progress with great interest. We appreciate the opportunity to help you in this process, which is a very important process in the wellbeing of Ontario and Ontarians. We thank you for the opportunity to offer our comments and suggestions.

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**The Chair:** You persevered. I know your voice is quite sore. We appreciate this.

**Dr Blanco:** It'll be back tomorrow.

**The Chair:** We'll begin with the Liberal caucus, with Mr Patten.

**Mr Patten:** Thank you very much, Dr Blanco. It's a tough workplace here and I know it's not easy to communicate in it. The general message which I gather you're saying overall is that, first of all, if we can deal with the causes rather than the symptoms, over the long haul we will all be better off; and second, small business is very fragile; we know there are many bankruptcies in small business. By and large, it seems to me most of your members are small business. Is Inco a member of your force?

**Dr Blanco:** We depend on the large companies as well as the small ones.

**Mr Patten:** You have to represent all your members, and I can see that's somewhat reflected in your presentation, but you're suggesting there should be some prioritization of where the board will focus its analysis, on where the greatest frequencies of accidents are — and we all know where they are — and that there should be a concerted effort to bring that down by way of initiatives. The thing I haven't seen, because you just gave a summary of your presentation but I saw you had some

specific points in the back, is where you would focus. You're really talking about health and safety in the workplace, that this should be strengthened. Where specifically would you see such initiatives happening and how would they happen?

**Dr Blanco:** I'm not sure I understand exactly what question you're asking me. I understand the words but not necessarily the question. If what you're talking about is which specific groups, activities or what have you would receive attention, I would say that the answer should be in the statistics, wherever the problems are in a statistically significant way, because it is not appropriate to take sudden decisions. The data can be scattered and lead one to the wrong decisions. One has to be extremely careful. But I suppose that wherever the data say the greatest consistent problems are is where one has to establish the appropriate relationships with the employees and the employers and work with them rather than at cross purposes from them.

**Mr Patten:** But I don't see in the legislation, unless you do — the government continues to say its emphasis is on health and safety and prevention.

**Dr Blanco:** Yes.

**Mr Patten:** Do you see that in the legislation?

**Dr Blanco:** You're asking me to pass judgement on the specifics of the legislation?

**Mr Patten:** On the proposed legislation.

**Dr Blanco:** In the statement of intent, in the preamble, it's quite clearly stated that this was one of the cornerstones, and I believe prevention is the cornerstone of success.

**Mr Patten:** I'm asking you because I don't see it. What would you recommend be done or included to ensure this approach is taken? At the moment I don't see what you're recommending, and I agree with part of your recommendation.

**Dr Blanco:** I would recommend strongly that this is the cornerstone and should remain so. As to the specifics, how it's best done, I am not in the position to tell you. There was a second part to your question?

**Mr Patten:** It was going to be, "How?" That's okay.

**Mr Laughren:** Mr Blanco, welcome to the committee. I have a couple of points I'll throw out and ask you to respond to so we don't lose a lot of time in exchanges. One point has to do with your statement referred to by Mr Patten that Bill 99 shows a very strong emphasis on injury prevention. I am desperately trying to find that in this bill. Good wishes don't make it happen unless it's legislated. I wonder if you could be as specific as you can be as to where Bill 99 shows a strong emphasis on injury prevention.

Secondly, what's the link between that and the Occupational Disease Panel, which has been referred to earlier? If you're so concerned about prevention, would you not also be concerned about the folding in of the ODP into the WCB? Would you not want it to maintain

its independence, with its scientific staff and so forth? That's the second question.

I don't know what the chamber's position is. We heard today what your former employer's position was, to their everlasting discredit, Inco's position on the ODP. I'm surprised by that and disappointed at Inco's position on that, because historically I thought they were moving forward on some of these issues, but on that one they're moving backwards, and I'd be interested in what you have to say on that.

Thirdly, I'd be interested to know whether or not you agree that the reduction in assessments on employers of 5% at the same time we're reducing benefits to workers is a contradiction in fairness, and also, if people are so concerned about the unfunded liability, why you would support a reduction in the assessments of employers at the same time. I'm puzzled. There are three things I wonder if you could address.

**Dr Blanco:** Those are all very good questions. I certainly do not wish to speak on behalf of any past employers I may have had. I'll leave that to them. If you don't mind, I need to summarize your questions. The first one is, where indeed within the bill? Perhaps, as you say, it is not as explicit as it should be, and therefore I reiterate the need from our perspective that it should be the cornerstone of whatever it is that eventually gets enacted. Our point is not as to what the letter of the law as proposed says but what we believe it ought to say. Yes, prevention should be the cornerstone.

You asked me a second question with regard to occupational health and illness. I really don't believe I am particularly qualified from where I look at it at this point to deal with that issue.

**Mr Laughren:** No, but does the chamber support what is happening to the ODP?

**Dr Blanco:** The chamber is not knowledgeable enough to pass judgements on such detail, so we abstain from saying anything other than what we need is the proper balance, that indeed in the end the total cost will depend on our ability to reduce the number of events, whether they be injuries or illnesses, that arise from the workplace.

**Mr Laughren:** The third was the reduction in assessments on employers.

**Dr Blanco:** As to the particular benefits or costs of a given financial decision, I think in the end, if I can repeat myself, if we were successful in reducing the number of incidents by something like 20%, then the net decrease in cost over time would be significant enough to wipe out any discrepancies that may arise instantaneously. I didn't think that particular point was a matter where our judgement would be of any consequence. We would rather focus on the necessity for reducing the number of injuries, for returning the worker to full employment as early as possible, for streamlining the operation of the WCB so that it provides service and is so regarded by all users. We believe that, as in any other aspect of business,



such efficiencies in the end result in a better product, higher quality, more satisfied customers and lower costs. That's what we would like.

**Mr Maves:** Thank you both for coming forward with your presentation today. On similar lines, returning to your recommendations, you say, "That the workers' compensation adopt the explicit mandate to strengthen the internal responsibility system: foster cooperation, partnerships and coalitions to encourage very small and small business and their employees to decrease injuries, decrease severity and improve return to work and therefore decrease overall workers' compensation costs."

As you've alluded to, the very first thing that the purpose clause states is, "The purpose of this act is to accomplish the following in a financially responsible and accountable manner," which is one of your points. The very first point is, "To promote health and safety in workplaces and to prevent and reduce the occurrence of workplace injuries and occupational diseases." The purpose clause will guide the board on the rest of the act. There are three other purpose clauses about facilitating the re-entry into the labour market and so on. How much more explicit would you make that? To me, that's quite explicit, the purpose clause which guides the rest of the act, and the very first thing is to promote health and safety in workplaces. How would you make it a more explicit mandate for the board?

**Dr Blanco:** From the tone of the questions that I was asked in this brief interlude this morning, I suggest to you that across the table from you there are people who do not think it explicit enough. I'm not exactly sure what it is they would like to see. My point is that whatever it is, in the end it has to remain explicit and it has to be clear that that is what we're trying to do. That would be our recommendation.

**Mr Maves:** I think it's quite clear in that purpose clause, but I appreciate your comments.

I know the CFIB has done studies in surveys with their employers that are in the CFIB and one of the number one concerns is not only the costs of WCB but having to deal with the whole system all the time. Is that something you find also with the people in your organization?

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**Dr Blanco:** It is sort of an arcane business, not understood by the small employer who works out of a basement and has maybe two employees. We have many of those. It may be much better understood by the larger ones. I believe it is very important that the workers' compensation system and the safety and health systems become understandable not only to the large employers but to the small employers. To the extent that they are difficult to understand or difficult to work with or cause great delays or cause unnecessary trauma and anguish, there is an opportunity to improve. I believe it is essential that the service provided be regarded as effective, quick, on the spot; all of that. That requires the determination to

do so; otherwise it's easy in a very large system to get lost.

**The Chair:** On behalf of the committee, we thank you for coming before us this morning with your suggestions.

#### ADVOCATE FOR INJURED WORKERS OF SAULT STE MARIE

**The Chair:** I'd like to now call upon the representative from the Advocate for Injured Workers of Sault Ste Marie, Ms Cranston.

**Ms Judy Cranston:** Good morning. I'm Judy Cranston. I'm president of the injured workers' advocate of the Sault. I represent quite a few injured workers — well, lots of injured workers. I had prepared a speech but I forgot it, so I'll have to wing it.

The problems we have in Sault Ste Marie are problems that are going to affect most injured workers should this bill go through, because there are a lot of ethnic groups in the city of Sault Ste Marie. These people are unable to read or write English. The only English they know is the English they have picked up on their job site. Most of these people, if they come in with a trade as a bricklayer or something and they get hurt on the job, are not going to be able to fill out these forms that, according to this bill, they have to ask their employers for. They're going to be very intimidated. It is very intimidating asking for a job when you don't understand the language and the ways of the law anyway.

I am going to quote from one of my files. This was a Polish gentleman who was hurt on the job. He had a back injury. His claim was left sitting. It wasn't really denied but it wasn't accepted. They kept asking for more information and more information. His is not the only case, and a lot of cases are the same. This gentleman in turn was off work, so he went to UIC and they told him they could give him benefits under sick benefit time, which is 15 weeks. Fifteen weeks isn't very long, especially for a back injury, but this is how it works.

This gentleman went to approximately 48% of his wages. That's not very much money. He had a wife and two children. When his benefits ran out, he then had to go into his RRSPs, his savings and everything that he had. He still had a mortgage, I believe he was paying on a vehicle, and what other finer things in life that they had they were paying on because he is only in his mid-40s.

When these things ran out, he had to apply for social assistance, which is very degrading to somebody who has worked all his life and who has not expected somebody to pass things out to him for nothing. When he went to social assistance he was asked, "Do you have anything?" He said, No, I used up everything." "Do you have an insurance policy?" "Oh yes, I have a life insurance policy so if something happens to me, my wife will get X number of dollars." This gentleman had to cash his life insurance policy because it was an asset. This money had to be spent, then he got on social assistance.

This is not one case; this happens in many cases. WCB felt that he should be looking for some other type of work. Although he couldn't do the work he was doing, they felt he could do something like a parking lot attendant or desk security or something like this. Through his functional abilities evaluation, this is what they deemed he could do. If they had read further in this, this gentleman could walk for 10 minutes, he could sit for 10 minutes. Who in their right mind is going to hire a man who after 10 minutes walking or 10 minutes sitting has to rest for an hour or two hours or whatever? Or he has to be on medication and he is not able to function properly: it may make him groggy; it may mean that he can't do his job properly. Who's going to hire him? I'm sure that nobody in this room, if they are an employer, wants to take on somebody for 10 minutes' work, 20 minutes tops, then give them a rest. Who is going to do it? Are you going to pay them for 20 minutes or are you going to pay them for the full day?

This gentleman lost everything he had. His children's money that he had set aside for education had to be spent. He ended up with nothing. The bottom line was he committed suicide. Scary picture, eh?

Bill 99 is going to make it harder to get. You have to go to your employer — another thing, you go to your employer, you have to ask for this form. How intimidating is it going to be? You're going to cost this company money because you're going on WCB benefit. It's just like asking for a raise; it's worse than asking for a raise because with a raise you may get a few cents and go on your way. This could cost them more money. How many employers are going to give up this paper willingly? How many people want to do it?

Medical treatment: WCB wants to decide what medical treatment you will get. Are they doctors up there? They have doctors up there, but are all adjudicators going to be doctors? Do all WCB people who are determining what this gentleman or woman should do have medical training? How do they know what you need? If you don't cooperate, you don't try and go to work, you don't go to the doctor that they decide, they're going to cut off your benefits. In other words, they're holding a knife over your head or to your throat or whatever. You have to do what they say when they say whether you agree with it or not because they're the ones who are holding the purse-strings. You are their employee now. They're your employer. You're still an employee. You still don't have rights.

WCB is going to determine when or how this employee gets back to work. Having worked with the WCB and injured workers, they put you through a means test and you go through this retraining and they decide what you're qualified for. Most people qualify under this one section. "Oh, you can be a desk clerk or a service clerk." How many desk clerks and service clerks are out there? How many jobs are out there for this one thing? How many injured workers on the job who have no

education to do this can take this job? We send them to school. All right, that's fine. They want to go to school.

If they've come across to Canada with no education, they start at the bottom. Take a gentleman in his early 60s, late 50s, who's hurt on the job. He has to be retrained. He has to go back to school. He's going to start in the sandbox, right? He's going to start in the sandbox; he doesn't have any education. We educate this gentleman. We put him through school. It's very degrading to have a gentleman that age having to go and report to school. But they do. In order to keep your WCB benefits, you go to school. They're going to school. Then, all of a sudden, WCB says, "This gentleman is not going to make it. We'll give him his FEL award," which is 85% of the difference of what he could make if they thought he could be a desk clerk and what he was making before. He loses all his money, he loses his dignity. Where does he go from there?

1150

This bill is going to make it worse. The people here are going to have no say. It's terrible. Why does the government feel that they should be able to do this to the injured worker? Most people are discussing the unfunded liability. I often wonder why there is such a big to-do about it. What insurance company, what outfit is going to have to pay 100% of everything all at once to everybody? Is everybody going to collect the whole 100% the same day? That's just like saying that everybody insured with London Life dies the same day and their beneficiaries get the money. Who's going to say they have all that money? I'm sure they don't have it. They're going to have to call in moneys from someplace. WCB should have to do the same.

They've decided that there should be a snitch line because there are all kinds of people out there who are abusing the system. The amount of money they're putting out there for people supposedly abusing this system could be helping the people it should be helping.

I feel Bill 99 is not for the injured workers; it's for the guy at the top, the same guy who is getting rebates back because they're bringing back injured workers to sit in there and then laying them off, and then: "Sorry about your luck. You don't get anything. You were called back and there's no job for you."

I feel that if in all honesty this government thinks about the people who are putting the tax money to keep this country going all get hurt, where are they going to get it, who's going to run it? It's the people who are running this country now, who are keeping us surviving, who are the people they're trying to condemn.

**Mr Christopherson:** Judy, thank you very much for your presentation, and please don't be embarrassed by the tears. We've seen a lot of tears already, and I expect by the time we're done we're going to see a lot more.

I want to ask you about the forms being filled in and people feeling intimidated and also their ability to fill them out. On June 16, Gord Wilson, the president of the



Ontario Federation of Labour, who by the way is in the audience today, said in his presentation: "I ask the government members..., how will the 24% of people who can neither read nor write at a grade 9 level cope with the form...? In how many languages will it be available? If the government's claim is that Bill 99 has been well thought out, then tell us today, how many languages will these forms be printed in.... Anyone here knows the consequences of making an error on a government form."

Just this morning we heard from Mr Copes, representing the Sudbury Community Legal Clinic, and he stated, "Given that many injured workers have limited literacy skills and also, due to their work-related injuries, may not be functioning as well as non-injured persons, it may be difficult for an injured worker to launch an appeal within time," that being the new 30-day limit where there didn't used to be one.

My question to you is this: It seems there are a whole lot of workers who for various reasons may have a great deal of difficulty with these forms. Looking at the concerns of new Canadians, it adds that much more concern about both their ability to fill in the forms properly and even at the outset to be able to ask for them without feeling intimidated by their employer. It seems to us in our caucus there are going to be literally tens of thousands of people who either can't fill out the form properly because they just don't have the skills or are going to be far too intimidated to even ask for the form in the first place. Would you agree that is that big a problem, or are we overstating it?

**Ms Cranston:** No, I think it's that big and it could be worse. There are a lot of injured workers' groups, but people don't realize that they're there to help and they think they have to pay for this. Most injured workers' groups or anyone under the Ontario Network of Injured Workers is a no-fee-for-service.

Because of limited funding, because of the work we do trying to help these people, a lot of people don't know that they can come to us, but we in turn cannot, as an injured workers' group, ask that employer. The employee's going to have to do it. I know that there are not going to be these forms put out in — I have Lithuanian, I have Polish, I have Italian, I have native, all kinds in Sault Ste Marie. There's no way that these people are going to get across to their employer what they want.

They're going to be told, "Okay, this is what you do." They don't know how to fill it out, they can't be helped. At this point, the doctor helps fill it out, which is great, or the employers, if they sit down, and the forms are filled out, the worker fills out a form. But until they get that form and they find out about us, then maybe we can help them; but if they can't get the form or they don't know about us, they don't have a hope.

**Mr Christopherson:** If the 30 days go by, they're completely out of luck.

**Ms Cranston:** If the 30 days are gone, they have nothing. Our welfare system is going to be so bad. It has

been cut down by this government by — I'm not sure what it is — some 20%, whatever. I believe a single person gets about \$500. How they live on \$500 I'll never know, but for the people who have been used to making big dollars and it comes down to that, there is going to be more crime, there are going to be more family breakups, there are going to be more suicides, all these problems. This country is headed for disaster.

**Mr Christopherson:** Of course, if they go on welfare instead of WCB, the stats will look good for the government because they'll claim that injuries are down. The reality is just that the injuries aren't being reported.

**Ms Cranston:** They have to right now, when they go on social services, when they're trying for their WCB. In the city of Sault Ste Marie last month, out of all the injured workers who had to go on that, there was only money paid back for 26 injured workers. Out of the thousands of injured workers up there, only money for 26 injured workers came back in to fill the coffers that had to be done. So out of thousands, 26 is what? Nothing.

**Mr Joseph Spina (Brampton North):** Thank you, Ms Cranston, for your presentation. It's important that we get your perspective and your feelings. I just want to clarify the record in reference to what Mr Christopherson said, that for a while now, a long time actually, I think since they were in government, the WCB forms have been available, as I understand, in almost 70 different languages. They don't have to go to the employer. As you know, they often most readily get the forms from doctors. When they go to a doctor and they're complaining about a pain, that often is where the worker gets the forms filled out because obviously they need the doctor's input on it.

What I want to ask you is, if you could help me on this, I'm looking at the lady who was here from Elliot Lake earlier and yourself, you're part of an advocate group. I wonder if you could clarify for us what the advocacy group does. Are you volunteer? Is there some funding from somewhere? It appears as if you are the group that helped the injured workers, and that's what we would like to know more about so that if we can enhance that, maybe that's something that's a consideration.

**Ms Cranston:** Our group is sponsored partly for our office space and the running of the office, no wages, nothing, because it's a volunteer organization on a no-fee-for-service basis by the OWA, the office of the worker adviser. We have to do funding, in other words, to keep other things going, like phone bills paid, whatever, office things.

Now at this time there may be that many forms and yes, the doctor can fill them out. But with your Bill 99, if it goes through, the doctor cannot fill out that form. You have to go to the employer for that form. This is why we say Bill 99 is not for the injured worker.

When someone comes to our office, and there are more coming in now — this bill is scaring a lot of people and rightly it should — they come in and they're hesitant

to ask. They don't have any money any more because they've been off and workers' comp isn't coming in. The first thing they ask is, "I don't know how I can pay you." They don't have to pay us. We're there to help them fill out the form, whether it's WCB, whether it's a Canada pension form or whatever. We're there for them. Once they realize that, we have no problems.

1200

But the thing is, right now, with this bill going through — and they have to go to their employer and they have to ask for this form — a lot of people aren't even going to know what kind of form to ask for. If they don't bring it to someone who has worked with WCB and they try to do it on their own, we aren't even sure that they're going to get the right form. How can this government guarantee that the employer is going to give that injured worker the right form to fill out in the first place?

**Mr Spina:** Bill 99 does not restrict the use of forms from WCB; they're still available from doctors and other sources. Bill 99 is not perfect, we acknowledge that, but that's the purpose of the hearings, to hear back. But those forms will still be available from doctors from what we understand.

**Ms Cranston:** Under Bill 99, the injured worker must ask their employer for a specific form. It's in the bill under self-filing.

**The Chair:** We'll move to Mr Patten, please.

**Mr Spina:** That's not in the bill.

**The Chair:** Excuse me. Mr Patten.

**Mr Patten:** I think it may be the communication. We had raised this question earlier and we were told by the government side, the minister's office actually, that the form could be obtained through a doctor, so we'll see. Regardless, this should be clarified so that people know they have options and alternatives. We'll make a note of that and bring that up for amendment.

I imagine there are a lot of things, but at some point we will have to go through clause-by-clause debate and make specific recommendations to this legislation. I'm trying to be realistic here. I don't see the government turning this thing down, so we have to identify very specifically what we would like to see changed and why. Do you have some specific areas in your priority list as to where we would make those changes?

**Ms Cranston:** The 30-day limitation is top on the list. I really don't know. There are so many things, having worked with injured workers, having them come in, having them whatever — I feel they should leave it alone. It's not a good system they have in WCB now, but it's better than what this government is proposing.

**Mr Patten:** On the 30-day limitation, it would be even more difficult for some people who are working in their second or third language, even if someone does help them fill out a form, their interpretation of what's being asked sometimes, so if they mess up on that then they've got to wait for a period of time and the decision is really out of whack with the intent and they have to go back to

redo it. There's a lot of time in there in which the person is off work and is not compensated.

**Ms Cranston:** That's right. Not only that, but the majority of people think, "Oh, this guy got hurt today, he's on WCB tomorrow." That's a myth. It doesn't happen. It doesn't happen now and it certainly won't happen then. Now you have an adjudicator in Thunder Bay — we deal out of Thunder Bay, you deal out of Sudbury, I guess — maybe had a bad day, didn't sleep good last night, had problems getting to work, traffic was too heavy. The first guy who picks up the phone to talk to them that day, if they haven't had a coffee or got their head on straight, they've denied it. I don't care what. "Your form didn't come back in." "I sent the form two weeks ago." "I'm sorry, I didn't get it." In the meantime, it's sitting in a mailroom.

Right now, there are all kinds of ways around, stalling tactics from the WCB for any injured worker at this point. What they have to do is get a new system, treat these people as human. They throw them out like an old pair of shoes. Where some people would probably give those shoes a second chance because they've been pretty faithful and comfortable, the injured worker doesn't get that.

**The Chair:** Thank you very much for your presentation.

That concludes our presentations for this morning. We'll reconvene at 1:30 this afternoon.

*The committee recessed from 1206 to 1333.*

#### ADVOCATE FOR INJURED WORKERS OF SUDBURY

**The Chair:** Our first witness to come before us this afternoon is Mr Campeau, Advocate for Injured Workers of Sudbury. Good afternoon and welcome.

**Mr Gilles Campeau:** First of all, thank you for permitting me the time to make a presentation here. As opposed to a presentation concerning the pros and cons of the proposed new legislation, I intend to render a submission to you concerning what the new legislation does not address.

This new legislation does not address the real root cause as to the reason there are such atrocious expenditures at the Workers' Compensation Board. The root cause of these problems begins at the operating level of workers' compensation. The new legislation does not address the improprieties which have been committed through these many years at the Workers' Compensation Board concerning the improper adjudication of files.

Files have been adjudicated in such a fashion that misinterpretation of legislation has been used, misinterpretation of medical documentation has been used, misinterpretation of facts on files has been used, all designed to deprive the injured worker of his legislated rights to benefits. Proof of this lies in the fact that the Workers' Compensation Board has been and is still being swamped with appeals. WCAT is swamped with appeals to the



point where it takes approximately a year and a half to even receive a decision from WCAT.

I have presented to you a letter I received from the general counsel at the Workers' Compensation Board, Mr Paul Holyoke, dated May 23, 1997, in which Mr Holyoke actually informs me that although the vetting of documentation on injured workers' files has been used by Workers' Compensation Board employees to deprive injured workers of their legislated rights, he intends to permit it to continue. Also, he informs me at the bottom of the letter that, "The opinions of staff members do not always coincide with those of the health care providers," meaning that unqualified personnel at the Workers' Compensation Board have been in the habit, and are in the habit as I speak, of overruling professional medical opinions and documentation on injured workers' files to deprive them of their legislated rights. As far as he's concerned, this will continue.

Until such time as the Workers' Compensation Board operating level is properly addressed, no matter what legislation is passed you will still have the problems of atrocious expenditures.

I have a case that I represented for an injured worker who was injured in 1980. That injured worker from 1980 to this date has received two decision reviews, two hearings at the hearing level with workers' compensation, one WCAT decision, which was rendered in her favour in 1985 and disregarded by the operating level. She's back at the hearing level once again in 1997 for the exact same decision that was rendered in 1980.

Multiply that by thousands and you will see the real reason why it is so costly to run the Workers' Compensation Board. Workers' Compensation Board problems are derived from the operating level on.

The problem is that most administrators at the Workers' Compensation Board are politically appointed. I have spoken to many of these administrators; 99.9% of these administrators have never had any knowledge concerning any legislation or policy procedure. They have all informed me that it was not their job to learn what their product is concerning injured workers or the employers in this province.

An injured worker who was injured in 1986 was on the Workers' Compensation Board for two years and after his second year of WCB he decided to return to work. He was permitted to return to work by his medical doctor. But he couldn't return to work because the company he was working for had gone under. Therefore, another employer in this city was kind enough to give him a job and he also was aware of the fact that this worker had previously been injured.

Three years after he worked for his new employer, he had a recurrence of injury. The operating level, instead of placing him back on the old claim, decided to issue a new claim and to charge the new employer. This is being done over and over again at the Workers' Compensation Board.

If you people want to know why it's costing so much money to the employers, all you've got to do is take an injured worker's file and read it. I don't think there are very many of you who have even read an injured worker's file to see if it was properly adjudicated by the Workers' Compensation Board employees, in accordance with the legislation or with policy procedure. Ninety-nine per cent of Workers' Compensation Board employees are totally and completely unfamiliar with the legislated act or with policy procedure, therefore rendering many improper decisions, I think it's safe to say, on all injured workers' files because of misinterpretations. This is what is costly. This is what is happening. These are the true facts.

**Mr Maves:** Thank you very much, Mr Campeau, for coming forward and making your presentation. You talked about the problem, the root cause of WCB at the operating level. You've had a lot of experience with not just your own claim, I guess — I was unsure of that — but others that you've helped to represent.

**Mr Campeau:** Yes. Unfortunately, I was injured in 1987 and at that time I was an employee of the Ministry of Housing. I am still an employee of the Ministry of Housing. I have been placed on an indefinite leave of absence. They pay for my benefits. Just to show you how bad it is over at the Workers' Compensation Board, they placed me on vocational rehab instead of giving me a wage loss. How could they place me on vocational rehab when I'm still employed?

1340

**Mr Maves:** You talked about administrators as politically appointed. To my knowledge that's not the case and anyone who's hired at the WCB is through a normal process of advertising for positions. They receive applications and it's not political at all. I'm just wondering where that came from.

**Mr Campeau:** Then I would dearly love someone to inform me why they are so unfamiliar with the legislation and policy procedure.

**Mr Maves:** They definitely, obviously, should be informed about the act itself and the policies of the WCB. I see you've been in contact with some of the people at WCB and I think you should make that quite clear.

**Mr Campeau:** I've been in contact with WCB personnel from the top down. They have even imposed an illegal restraining order on my person to try and prevent me from representing injured workers, because I win 99.9% of my claims. It's not difficult. All I do is correct the wrong.

**Mr Maves:** Right. I want to thank you for coming forward and making your presentation today and I would encourage you to continue to pass on your concerns to the management, the new board, at WCB about your concerns about their front-line employees.

**Mr Campeau:** They already know, and it won't make any difference. Another thing: This Bill 99 is already part

and parcel of policy procedure, so how can it be part and parcel of policy procedure when it hasn't even had its third reading yet? That's what injured workers would like to know. Could you people explain that?

**Mr Maves:** It's actually not passed yet, so —

**Mr Campeau:** No, but it's still policy procedure at Workers' Compensation Board. It's being implemented as we speak.

**Mr Maves:** Actually, I can't speak for entirely what they're doing —

**Mr Campeau:** I can. I'm telling you. The facts are there.

**Mr Maves:** — but there are some consultations taking place in anticipation of —

**Mr Campeau:** Is this just another political smoke-screen, that they're trying to appease the —

**Mr O'Toole:** Madam Chair, on a point of order, I want to ask this gentleman: You've made an assertion I'd like you to substantiate. You're saying there's a specific policy in place today as a direct result of Bill 99, which is in second reading. Could you cite me a specific policy that has been changed so we would be able to substantiate your claim?

**Mr Campeau:** There are many, but I can't provide them for you —

**Mr O'Toole:** No, I don't want the general paintbrush answer. I want the specific policy. You've made an accusation here. I'd like you to forward to us a specific policy that has been changed as a result of Bill 99.

**Mr Campeau:** I don't have it in front of me right now.

**Mr O'Toole:** Well, send it to us.

**Mr Campeau:** I wasn't prepared to do that, but I will provide it for you.

**Mr O'Toole:** Thank you very much.

**The Chair:** Mr O'Toole, that's not actually a point of order, but it can be taken as a question from the government members.

**Mr Campeau:** I'm very willing to provide that for you any time. I'll send you all you want, providing you don't ignore it.

**The Chair:** We'll move now to Mr Patten.

**Mr Patten:** Mr Campeau, thank you for coming. I take it you might agree with calling this bill, not just Bill 99 but Bill 99.9%, Out of Whack. That would be a better name for it.

**Mr Campeau:** Correct, absolutely correct. The fallacy is that we are led to believe that this bill and this new legislation will prevent industrial accidents. Somebody's living in a fairytale. Industrial accidents will continue to happen. It's a fait accompli. As long as there are human beings on this earth, they will get hurt.

**Mr Patten:** So your view is that the people at the operational level are not competent, they're not knowledgeable, they're not aware of the legislation —

**Mr Campeau:** Correct.

**Mr Patten:** — and therefore they're not adjudicating the cases in a fair or just way.

**Mr Campeau:** I can prove that this fact is being ignored by the Workers' Compensation Board administrators; also by politicians. I have here an injured worker's file. This file was ripped. This is a photocopy of a ripped file of an injured worker. This is fraud. It was done deliberately to deprive this injured worker of his legislated rights. They actually sent me photocopies of the ripped file, and they tried to inform me that this was improperly shredded in 1987 when they put it on microfiche. This is a lie, because this file was destroyed in 1981. It was ripped by hand. If they were going to destroy files in 1987 after placing them on microfiche, they would use a machine; they would not rip them by hand.

**Mr Patten:** Maybe the machine was broken.

**Mr Campeau:** I doubt it. If the machine was broken, WCB employees would do nothing; they would go home and get paid.

**Mr Patten:** What would be the solution, in your opinion? Do you suggest replacing everybody? Do you suggest training? Do you suggest orientation? What is your recommendation?

**Mr Campeau:** I suggest that politicians get off their butts and start investigating what's really going on at the Workers' Compensation Board, take these incompetent fools out of there and replace them with people who are prepared to do their jobs properly, fairly and impartially and in accordance with the legislation and in accordance with policy procedure only. That is my suggestion.

Until such time as you people do that, there will always be problems. The problems, as a matter of fact, with Bill 99 will get much worse, because what Bill 99 is actually doing is setting up a smokescreen and justifying improprieties that have been occurring since 1914 in the Workers' Compensation Board. Just by taking away, through Bill 99, the powers of an injured worker to be able to properly present himself through an appeal will not correct anything. The expenditures will still be there.

When the Workers' Compensation Board only spends 5% of its legislated responsibilities on injured workers and 12.5% on administration costs, where's the rest of the money? That's what we'd like to know. If there's so much expenditure and only 5% is going to injured workers, what are they going to do when the injured workers only receive 1%? What excuses will they have then? They can't blame injured workers any more for all the problems at the Workers' Compensation Board. Who will they blame then? The problem is that politicians think we're all a bunch of idiots. Well, we're not. We know what's going on. Thank you very much for your time.

**The Chair:** Mr Laughren, did you have a question?

**Mr Laughren:** Yes.

**Mr Campeau:** I'm sorry. I apologize.

**Mr Laughren:** It's very unusual. You may categorize me as one of the idiots, as a politician.



**Mr Campeau:** No. Listen, I'm sorry. I apologize. I should not have put all politicians in the same basket. There are some very good, excellent politicians.

**Mr Laughren:** Okay, because Mr Hastings and I are different.

**Mr Campeau:** I'm not a Conservative, by the way.

**Mr Laughren:** I need to say a couple of things, though. It's not usual for me to take issue with an injured workers' advocate, but there are some things I don't like to have on the record without being challenged, quite frankly. One is that I would never blame the workers at the WCB for being told to implement policies with which I disagree. They don't make the policies. They deliver the policies that are given to them by the board of directors of the WCB, with some guidance from the Ministry of Labour and committees like this. I wanted to say that very clearly, that the vast majority of workers at the board work very hard, do know what they're doing and are not appointed politically.

If you want to talk about the board of directors, all governments appoint political appointments to the board of directors, absolutely. We did it, the Liberals did it and the Conservatives did it.

**Mr Campeau:** Well, sure, it's a cash cow.

**Mr Laughren:** I understand that. It's not the workers there.

Secondly, I don't know what kind of relationship you have had traditionally in the war you're fighting on behalf of injured workers, but I don't find that doctors are always the ones who espouse the cause of the workers the best. I could give you some examples — I won't — where doctors' opinions were fundamentally mean and wrong and were overruled by people at WCB who saw this and overruled them. I don't disagree with that. I'm not saying I agree all the time, but I don't think doctors are the ones to adjudicate claims; I just don't.

**Mr Campeau:** That's news to me, Mr Laughren.

**Mr Laughren:** I think they have a role in it; absolutely they have a role in it.

Finally, the cost of running the WCB: I remember doing some number crunching on this. It was 10 years ago, but I suspect the number is even lower now. The cost of administering the WCB was less than half of what it costs to administer insurance companies and their claims, because they pay out huge amounts in commissions and have employees in different locations around the province and so forth. So the WCB is not inefficient in that sense. They are an efficient operation in terms of the total dollars they get and what they pay out to workers versus administration. I haven't said that. I don't like the WCB. I think their policies are wrongheaded and I think this bill is wrong. All I'm saying is I want to keep a focus on what's causing the problems and I don't think it's the workers at the WCB.

1350

**Mr Campeau:** Well, you're absolutely wrong. How many files of injured workers have you gone through, Mr

Laughren, since 1987? I've gone through hundreds and hundreds. How many files have you gone through, Mr Laughren? Therefore, how can you make that kind of statement?

**Mr Laughren:** Because I don't think it's the fault of the individual worker at the board.

**Mr Campeau:** I can prove to you it's their fault. Come to my place and I'll show you. I'll show you fraudulent activity at the Workers' Compensation Board. I have never met since 1987, with the exception of maybe two people working at the Workers' Compensation Board — that's in Toronto, Ottawa, Sudbury, you name it — I've never met one competent WCB employee, not one who knew anything of what they were doing. If they know what they're doing, then they're deliberately committing illegal fraud.

*Interjection.*

**Mr Campeau:** That's a matter of opinion.

**Mr Laughren:** Yes, it is, absolutely.

**Mr Campeau:** But I can also prove that Workers' Compensation Board employees have deliberately reversed professional medical opinions of well-known surgeons etc. Injured workers, for crying out loud, have been committing suicide because of this. Don't you people have a heart concerning that? We never hear about these people committing suicide, but talk to some of these doctors at Sunnybrook who are sick and tired of losing their patients through suicide because of the improper administration of their claim files by WCB employees at the Workers' Compensation Board. It's nice to say to Mr O'Keefe: "I'll give you a nice cushy job at the Workers' Compensation Board. We'll start you off at \$392,000 a year plus bonus but we'll give you a raise two months later to \$700,000 and change." Isn't that the true facts?

**The Chair:** Mr Campeau, thank you for taking the time to bring your views before the committee today.

**Mr Campeau:** I want to thank you very much. I know it fell on deaf ears, but I tried anyway.

#### NORTH BAY AND AREA INJURED WORKERS ASSOCIATION

**The Chair:** Now I'd like to call on a representative from the North Bay and Area Injured Workers Association, Mr Dagenais, please. Welcome, sir.

**Mr Roland Dagenais:** I don't know if I can follow this up but I can give some background on what he said. First of all, before going into my presentation, I sat and listened here this morning to people discussing their problems and how to solve them. Well, I had a problem one time with the WCB, dated January 4, 1979:

"Dear Mrs Dagenais:

"Re: Claim...Roland Dagenais (Deceased)

"Legislative amendments to the Workmen's Compensation Act provide the following retroactive benefits:

"Pension adjustment re deceased:

"From: \$450.00 per month,

"To: \$499.50 from June 7, 1976, to September 7, 1976."

It gives the figures here. They gave her a cheque for \$148.50 in arrears and she was going to get a pension of \$450 a month for the rest of her life, and I wish in hell she had got it because it's more than I'm getting. It's more than what I get, and I haven't got an apology, nothing — not a thing from the WCB. I've been fighting these sons of bitches 33 years and I'm tired of it.

I started up an advocacy group in North Bay. I have injured workers coming in to me, 18 and 20 years old, disabled probably at 50% and getting 15%. "What do I do? I can't go back to work." I said, "Fight the system like I do and join our group." What happens? They're scared to get cut off, and don't let anybody ever tell you that it doesn't happen, because it does happen.

I have a few other things I would like to mention here, one more that's kind of a backup to the gentleman before me. I'm a little upset here.

I have another letter here, November 18, 1988. This is by an adjudicator with the WCB.

"Following the hearing on October 18, 1988, I carried out an exhaustive search of our records and located the claim established for your accident in December 1964."

They called me a liar for 22 years. I went to WCAT, I went to hearings with WCB, I told them I had a claim and I was denied to give that information at all of these hearings. I was denied it. What do I get in return, after they find it? I got a nice letter telling me, "You're not entitled to anything under this claim." I had a swing-stage fall on my head, my back, my shoulders and my neck, but I'm entitled to nothing. Because they lost the file for 22 years, I'm the one to blame. Isn't that nice of them? We should have more people like this Mr Campeau.

I have a few answers in regard to some of the people who spoke to you today and were asked questions by the Tory representatives. Number one, the three-day injury: It's already being done. Where are you folks? You go to the city in North Bay, an employee gets hurt, cuts his finger, they don't send him home. They sit him in the corner, because when they put him on compensation, up goes their cost. Why do you think the North Bay situation — which is Mike Harris's riding, which I'm from — why do you think their compensation rates have gone down? They went down because they sit the people in the corner. They don't even bother.

I've had injured workers call me from the city: "What's this paper for, Roland? I don't understand it." No, they don't understand it because they're told to go and sit in the corner and do nothing and get paid for it so that the city can get a better compensation rate. What happens if they have a reinjury? You tell me. Don't want to have one of those. You're really in trouble.

Another thing is that I had asked — and I spoke to Mr Maves about it — the Minister of Labour, I heard her comment one day — I'm sorry Mr Christopherson isn't here, but I asked her one day after hearing her on the

parliamentary channel which I have watched for the past year, by the way. I know all you gentlemen quite well, especially Mr Hastings and Mr Maves.

So if you have any questions to ask me, after 33 years and still — and here's an update report from a clinic that you are proposing to cut off. It was just picked up this afternoon.

I asked Mrs Witmer for a meeting when she said in Parliament, "I have never denied an injured workers association a meeting." Well, I'm still waiting for mine. He said he'd look into it.

I asked Mr Harris in January 1996. I had the privilege of sitting in front of him for two hours and 15 minutes. It didn't do me any good because he didn't even know who Mrs Witmer was, as far as I was concerned. I had to tell him she sits two seats over from him in Parliament. He didn't know anything about the changes in Bill 99.

So who are we going to talk to? Who do injured workers talk to? We can't talk to our own government. Either that or he's lying. My God, somebody should know something. I left him a list of 12 questions for Mrs Witmer and I'm still waiting, since January 1997.

#### 1400

You talk about dealing with the Workers' Compensation Board. Well, I play a game with the kids at home. I've got two grandchildren. I have a hard time getting up and down off the floor and what not, but every once in a while they ask me to play 52 pickup. I'm sure you've played it. Well, that's just like dealing with the Workers' Compensation Board, because they toss you from that one to that one to that one.

I just went through this on June 26 when I was reassessed down here at the Sudbury office. I was assessed in 1978 for a right knee injury and then I developed problems with the left knee. I was on crutches for five years. I developed fibromyalgia. I got osteoarthritis. At times I can hardly move.

I went down for a review, to get reassessed for my left knee. So what did the doctor do? He comes in and interviews me, asks us questions. He didn't ask me if I had any. He never asked me. I went in and got assessed. He went down the hall and he sent some other guy in with me to do his dirty work.

The guy comes in and says, "Well, the doctor has decided to take 10% off your right leg and give you 5% for the left." I said, "That's kind of odd." After having a pension for over 22 years on my right leg, and it's still the same as it ever was — it was a Macintosh implant at that time. It compares to a knee joint now. So lo and behold, this is what they're going to do. "If you don't like it, it's too bad." Simple.

I asked to speak to the doctor. He said, "You already spoke to him." I said: "No, I didn't. He talked to me; I didn't talk to him." How am I going to ask him about an assessment before he even gives it? Pretty hard to do. When I go to see my doctor, he sits there and he answers



my questions. Not WCB doctors; they go and hide in the closet down the hall.

I don't call them doctors anyway. I can't figure out how a gynaecologist can be at the head of the medical department in Sudbury. That's what he took when he went to medical school. He was a gynaecologist and he knows everything about orthopaedic surgery, just like the one I've seen. He said: "Oh, I see you had a knee replacement, a new joint." I said, "No, I had a Macintosh implant. It was done back in 1974." He didn't know. He couldn't have read anything.

Mr Maves or one of you gentlemen mentioned about what has changed in the board recently that is in here. As president of the injured workers association, I hear it all the time. I've had people come and ask me: "What am I going to do now? I got a phone call from the WCB last Friday at 2 o'clock in the afternoon telling me my benefits are cut off." Three days later, in comes the mail, "You owe us \$5,000"; some of them as high as \$8,000. I believe that's in this policy.

I believe that nice bill they put in — what do they call it? Bill 26, the omnibus bill. That's a beautiful bill. They're doing it to the unions, they're doing it to the health workers, the nurses in the public sector, under a nice little bill that's hidden, number 26.

I have one more statement before I get into the other, if I have time. WCB employees are governed by the board of directors of WCB, who are put in place by the government in power. Mr Campeau got into something like that. I won't get into it too seriously, but everybody knows you've got to pay off your election debts.

This fellow we have in there now as chairman of the board I never heard of in my life. I've never seen him make a speech. I heard one time — I read it in the Toronto Star — that he's putting in investigators, spending all this money on investigators. To what? The WCB in the past, according to the papers, investigated and found six people on WCB who were fraudulent. We're spending all this money to hire these 39 or so extra — I can't believe it. What's happened to us?

My last question is — and I hope I'm going to get an answer from somebody before I leave — that before I go on with this I would like to know what is in this bill for injured workers. I heard what isn't in the bill all morning, but I'd like to know what's in it for me. I'm going to tell you what's in it for me. I'll go on to my presentation now.

I believe you know who I am, so good afternoon, ladies and gentlemen. I am pleased to be able to address the panel today on behalf of the North Bay and Area Injured Workers Association and injured workers as a whole. The government of Premier Mike Harris has finally agreed to public hearings. Although the hearings are being limited to the public so they can follow the policy of the Harris government, by ramming bills through — and believe me, they do, because I've

watched it — so most of the voters in Ontario will be caught off guard, I can assure you this will not happen.

The government of Mike Harris chooses to lie to the voters of Ontario by his own statements during the pre-election. Mr Harris has met his agenda and most of the abovementioned, and lo and behold it's time to hit the injured workers — it's time now, because it's summer time and we'll all have a good time — so the wealthy can reap the benefits of Mr Harris's tax cuts to those who are not in need of any financial assistance.

I should remind you right here, I came here yesterday because I had to go to the clinic down the street. This report backs all my claims up, and will be refused, I can guarantee you. I don't make a lot of money. Over the years since 1969, I had to take commutations. I think I took three or four. It was never explained to me how they worked or what not. They said, "You're going to get this and your benefits are going to be cut back," and what not, but I had no choice.

I was going to lose my house. I was so badly in debt that I couldn't even turn around. I was scared to leave the house. I'm still no better off, because I've taken those commutations. I'm no better off. I'm still a poor person. I own my own house, thank God. That's why I got the commutation, to pay off my mortgage. By the way, I didn't get that through WCB; I got that through WCAT, because WCB refused it.

I came here yesterday. I'm not financially rich, and I'm not even average. I slept in the car last night — it was a nice night to sleep in the car — because I can't afford \$60 to \$80 a night for a room in the city. I can't do it. I slept in the car. I told my wife, "You pack me a pillow and two or three blankets, because I'm sleeping in the car." I can't afford it. The WCB had to find things for a 22-year pension, to cut it back.

Some of the comments include no cuts to the following: health care, education, the environment and social services. Those were Mr Harris's comments during the pre-election. He promised not to cut program services etc to the most vulnerable people in society: the disabled persons of Ontario. Mr Harris has met his agenda on most of the above-mentioned, and lo and behold it's time for the injured workers of this great province to again be humiliated and cast aside so the wealthy can reap the tax benefits. We all know they're going to get money. I didn't get anything. I paid \$4 more in taxes with his great tax cut. I paid \$4 more this year than I did the year before. Why? Because he's got me on the starving list.

#### 1410

Some of their proposed changes in Bill 99 are not fit for a Third World country, let alone the province of Ontario. For instance, the Occupational Health and Safety Act is amended to eliminate the Workplace Health and Safety Agency and transfer its function to the Workplace Safety and Insurance Board. I don't know how to read that. All I can make out of it is what I said here. How you can amend an act that you are eliminating

beats me. An act is there to be amended, but you amended it all right; you just threw it all out. That's the easy way.

The words "fair compensation" are eliminated. Why? The original act of 1914 called for fair compensation, and it's being eliminated, so one has to assume there will be no more fair compensation for injured workers. What else? Why would they take the word "fair" out? I guess we're just not going to get it. This is the whole idea. Help the employers; they're the ones that pay the shots come election time.

**The Chair:** Excuse me, Mr Dagenais. I just wanted to let you know you have about a minute left in your presentation.

**Mr Dagenais:** About a minute and a half, eh? I'd like to leave it open then to the floor. I have a lot. You can go ahead and read it. I'd like to answer a few questions. I'd be quite willing to, but I'd like to make one point, just one. Injured workers lose, employers gain: \$8 billion in 5% cuts to premiums to employers; \$10 billion to \$20 billion in cuts to injured workers in indexing and in stress. So you tell me who is gaining by this beautiful bill.

**The Chair:** Thank you very much. There isn't enough time to do questions from each of the caucuses.

**Mr Dagenais:** I figured that. I haven't even started. Maybe you should consider Mr Christopherson's statement when they began this hearing and maybe hold some more so the person can tell you what exactly has happened at WCB. I'd be glad to. I've offered but they won't accept. I don't know why.

**The Chair:** Mr Dagenais, thank you for taking the time to bring your perspective before the committee members today.

#### INJURED WORKERS' ADVISORY SERVICES OF SAULT STE MARIE AND ALGOMA

**The Chair:** I now call the representative from the Injured Workers' Advisory Services of Sault Ste Marie and Algoma; Pat Jolin, I believe it is. Good afternoon, Mr Jolin, and welcome.

**Mr Pat Jolin:** A long, hard drive. It takes me five and a half hours to drive three, so I'm not in a very good sitting mood.

I'll just start out with the document that's being passed around. It's the print form of what my intention is. I'd like to start by saying that I've been attending these committees since 1980, and I'm sure you're all quite well aware that we hash out the same thing over and over again: changes to the act, changes to the governments, changes to WCB policy. All I'm going to do is read what's on this for the record, and if there are any questions afterwards, fine.

To the Legislative Assembly of Ontario concerning resources development on reform and Bill 99:

Good afternoon, ladies and gentlemen of the committee, the public, and the labour movement involved, as well as the injured workers' movement and the media. I wish to thank you for allowing me the time for representing myself and also the office of the Injured Workers' Advisory Services of Sault Ste Marie, Ontario, to speak about the dramatic changes which are being implemented by this government throughout the Workers' Compensation Board of Ontario and which affect my life and wellbeing as well as the rest of the injured workers in the province.

Could we have your attention, please, while you're sitting there talking? You're here to listen to us, are you not? Sorry.

It was not our fault in most cases that we got hurt on the job, but unfortunately as we stand here today and as our future looks dimmer, we stand for our rights of protection for a system which if governed properly would be for the benefit of the injured workers, the employer, the Workers' Compensation Board etc.

It is my view that in the past, and now the present, the unfounded changes which the WCB has taken to implement on its own and without the consent of the stakeholders at large and also, as throughout the past, having hearings such as this one here today are still implementing changes which benefit the government and the employers only, not the injured workers.

Under Bill 99 we are considered second-class workers in many respects. Those workers unfortunate enough to suffer from the wrong work-related injuries will become second-class injured workers with mental stress and chronic pain, and will be arbitrarily denied compensation or have their benefits severely limited without reference to the individual merits of their cases. Again, nothing in Bill 99 explicitly restores the right to sue to the workers who suffer from occupational stress and also chronic pain injuries in the province of Ontario.

Also, I believe the time limits that the WCB proposes will prompt more appeals. In order to protect the rights of the workers and the employers, they will file more appeals even if they are unsure of the merits of their case. I know for a fact, such as my own case, the appeal system is a double jeopardy — I've been saying that for years — and a waste of taxpayers' dollars because 90% of them are denied and are sent to be a substantial burden on the tribunal. Unfortunately, due to this Bill 99 proposal, there will be increased legal litigation in the courts. I myself find it very perturbing that the minister, whether through herself or through the Premier's office, will allow such profound changes to the WCB policy, which in total is a delay and denial for loss of workers' rights to appeal some board decisions at contemporary levels. I wish to add that Bill 99 is unconstitutional and a discrimination against injured workers, who will suffer further while their rights are pursued, and the government will expend precious dollars to defend its unjustified discrimination throughout the process.



Also, in brief, as of yesterday I am very upset about the discrimination towards documented work-related medical prescription requests by family doctors being delayed, to assist the injured workers through their pain and suffering ordeals.

Before I close with the bottom line, I'd like to say and again repeat that I know you've heard it all and you're hearing it again today, but I'm an injured worker. I've been injured since 1976. I helped form injured workers' groups in the province of Ontario throughout the years and I originated another one in Sault Ste Marie called the IWAS, which was at every hearing that's ever been attended in this province by other groups. I was forced to go against board policy again, because I'm denied all of my rights. That's why I keep on this discrimination thing. I'm denied my rights because if I can represent people, I could be a lawyer, a judge, a court clerk or a legal assistant or paralegal, yet I'm deemed, because I'm over 50 years old, that I can't do it. I think it's very important that the panel understand that.

Again, thank you very much for allowing me to make the presentation. I could go on for hours and hours, like I was saying earlier, on behalf of injured workers and labour, and even the employers as far as that goes, because I have many consultations with all of them, all sides. I don't discriminate. Right now everything from rehab to adjudicators is being very discriminatory in just about every manner that there is, and it's very unjustifiable. Please don't let the government that's in power today do these foolish things by just putting in Bill 99 without proper amendments from the stakeholders. Thank you.

**The Chair:** Thank you. There's just under four minutes per caucus.

**Mr Patten:** Thank you, Mr Jolin. We have some questions for you. Could you go over that last bit you mentioned in terms of being discriminated against, that you weren't permitted to represent people because you are over 50? I ask that for selfish reasons.

**Mr Jolin:** There's what we used to call a technical adviser. As you know, the board got rid of most of the technical advisers, supervisors, in the immediate offices. I had the unfortunate incident in our office in Sault Ste Marie that it's right on my file. I just had a hearing three weeks ago. I waited four years for a hearing in my own case to try and get entitlements which I believe are well overdue to me. I tried to get out of the injured workers' movement and pass it on down the line, but then there was so much backwater and hogwash that I was forced by hundreds coming knocking on my door to start another one over again. That's why I'm here today representing this new group.

1420

The constant thing about it is it's in my file on a regular case by the technical adviser. Even the girls on the switchboard notify them, "Pat Jolin called here 10 times today about people's files." We have requisitions

of requests through the access department for 100 files a week through the office, but it's not the office name that's on it, it's my particular name, and it shows in my files.

Harry Malneck, who was a technical adviser, said himself, throughout the part of my rehab program when I was forced to quit the final job that I tried in 1989, that I wasn't cooperating with the board, but that isn't the way he told me face to face; I'm just too old and all this and that. That part's in my file. I taped the session. I let Bob Rae, I let Odoardo Di Santo, I let so many ministers listen to it, it's not funny. I can't use it, but right there, face to face on a tape recorder, he said if I can represent injured workers and attend at the office, there's nothing he can do for me.

Instead of being recommended for 147.4 and 165 and other entitlements for reassessment and stuff that I'm well overdue, I was literally cut off and denied. It took me four years. Like I say, I just had a hearing three weeks ago and I was denied, the results of that hearing.

I take chiropractic treatment two, three times a day just to keep walking and keep myself motivated. I have a full lumbar support brace, plus I wear a full-form moulded neck collar. I wore it all the way here, so I wasn't going to try and wear it in because I wouldn't be able to talk; I can't move my jaw. I get an hour and a half sleep at night, and that's been for about 12 years.

**Mr Patten:** What was the nature of your injury?

**Mr Jolin:** I just left Sudbury hospital here last week and I've got spinal stenosis, spinal meningitis right through my cervical. I've got no feeling at all in my hands and my legs. I won't use a cane or a crutch until I have to. As a matter of fact, even these specialists' reports in my file are being denied and I've got to appeal it. They won't even pay me transportation. I had to come down on my own for these specialists. It's throughout my file in several places about the discriminatory behaviour of WCB employees because I'm helping other people.

**Mr Patten:** As well as saying there is discrimination that you experience, you also said that Bill 99 is unconstitutional.

**Mr Jolin:** Yes, I believe it is unconstitutional. The simple reason is that there's discrimination in parts of the bill itself, plus the updates that are being proposed. It's still discriminatory to the injured workers because what's going to happen, as you know, is that you've got to go to the employer and say, "Okay, I got hurt on the job," under this new one. We see it every day that they're scared to go to the employer. They won't because they're going to lose their job: "Go home and we'll keep paying you," and after two weeks, "Sorry, you're laid off," and they can't go back. There's a six-month time period for WCB. I've seen already that it's happening. They're provoking it and the employers are getting away with it.

I was a self-employed employer myself for many years. I see both sides of the fence, plus I help injured workers every day whether I'm flat on a hospital bed or if

I'm at home. I can't hold a phone very long but I do the best I can.

**Mr Laughren:** Mr Jolin, thank you for coming here. About a third of the way down you say, "after having hearings such as this one today, still implementing changes which benefit the government and the employer solely." We've been trying to get from the government members in these hearings how this bill benefits the injured workers. We can't find anything. We see how it benefits the employers because they get a 5% reduction in their assessment rates to start with.

**Mr Jolin:** That's right. I agree totally.

**Mr Laughren:** I keep waiting for the government members to jump in and put on the record how this bill is good for injured workers.

The other thing I wanted to ask you about is you say you believe the time limits the WCB proposes will prompt more appeals. I was just checking section 114 of the bill, which deals with time limits. Is that what you meant, that because of the time limit of 30 days for anything dealing with return to work, including vocational rehab, it's 30 days and everything else is six months? Is that what you're referring to?

**Mr Jolin:** We see it already through the board process what they're trying to do. The government already, as of today, is trying to get the board personnel to implement that, and they can deem, just by the amount of volume and words, talking to an injured worker who is going to school for upgrading — they've got to travel so many miles. There are people from Elliot Lake right now and Blind River who are travelling to the Sault to go to Sault College or going to Lake State University, which is a dramatic drive. If they don't find lodging at their own expense and then the board reimburses, they're deemed to the point — right now they're being pushed by the rehab counsellor and by the managers of the offices: "Well, too bad. You take it or you leave it." If they say, "I can't afford it. I can't afford to live here and raise my family down there," that is called deemed, as you know, and it's deeming that they're uncooperative. What they're doing now is implementing Bill 99 to say, "Okay, they won't go back to work for the same employer or a new employer because that employer has to know what they're doing," so they still don't benefit from it.

**Mr Laughren:** It seems to me that if I was the injured worker and I had those time limits, I'd appeal. I'd virtually automatically appeal because of the time limit. I'm not going to take the chance of leaving it too long while I try and build my case.

**Mr Jolin:** Just as an example, I was rushed by the hearing department when I had my hearing a few weeks ago. I was told literally by the person on the other end of the phone in Toronto that I was being squeezed between two other hearings at the Sault office at the Holiday Inn and that I was going to have 15 to 20 minutes to present my case. I went in prepared to present it in 15 or 20 minutes. The hearings officer said, "Oh no, you can have

the whole afternoon." I said, "Excuse me?" She said, "Yes, you can have the whole afternoon; I'm prepared to listen to your whole case." I said, "I've got it all ready in two pages for you because I was told I had 15 minutes and then five minutes for questions."

**Mr Stewart:** Thank you, sir. The gentleman before you said he had been involved for 33 years. As I make it, you have been involved with this problem for 21 years, correct?

**Mr Jolin:** Since 1976.

**Mr Stewart:** Does that not say that we should start to look at some changes to it?

**Mr Jolin:** As I stated earlier, I do believe there are changes that should be made, yes. I'm for changes to be made to the board on all sides, really. But what I don't believe is — I'll just give you a couple of examples to your question. In Algoma Steel and in the ironworkers, the boilermakers, the tradespeople, they are getting more of a pension than what I'm getting, and yet I can show you papers until they're coming out of your ears that I want to go back. I went back to work five times in a body cast right from my bellybutton to my chin, with my arms spread out, just so I could get back on the payroll over the years. But turn around and now I'm deemed and I'm degraded to getting nothing. These guys are back to work, and some of them are my best friends, but that's besides the point. If they're back to work and they're making the full dollar and they never lost anything over the years, then I don't believe they should be qualified for pension rights until they can't work any more. Then they should be put on that pension, reassessed and put on pension. I've been telling the government of the day that for years, the different governments.

**Mr Stewart:** It's interesting to note that no governments were listening to you, I guess. I don't mean that facetiously.

**Mr Jolin:** Unfortunately, that's right.

**Mr Stewart:** My concern is that I've listened here this morning to a lot of presentations and the presentations are regarding one thing only: "No." I guess where I get turned on with what you just said a few minutes ago is when somebody comes up to me and says, "We don't like what's there, but here are some recommendations that you would do." I think that's where most people miss the boat. It's come out and criticize everything without an alternative, and I'm talking about constructive criticism. I appreciate what you just said, because I think that's what we have to do. Do I have any time left?

**The Chair:** Yes, you do, a little bit.

**Mr Jolin:** Just one more thing on your question, though, if I might. Again, like I said at the start, I've attended many of these type of hearings. What happens is the hearing isn't long enough. Why should myself and other people have to travel all the way from Sault Ste Marie or Wawa or other places? This hearing could have been held in Sault Ste Marie as well because there are at



least 800 or 900 injured workers right now on benefits there.

**Mr Stewart:** But you've got to realize that it's not only the government that decides how many days of hearings and all these things. It's all three parties that do that, and they do an agreement on the way it is.

**Ms Martel:** We've asked for them to be extended. Come on, Gary.

**The Chair:** Order.

**Mr Stewart:** It's part of everybody involved in this.

**Mr Jolin:** Without being misleading to the question, with my right foot forward, I'm trying to say that if the hearings were held, in my view, in a proper area — sure, I've got it all right here because I was told I had 10 minutes and then 10 minutes of questions. But that isn't fair. If the government, no difference what party, wants to take time to listen to injured workers and listen to the employers and talk about it, then that's fair, but not when you're allowed 10 minutes and you've got to drive for five and a half hours to attend something like this. Right now I don't even feel like sitting here, but I make my point by being here —

**Mr Stewart:** I appreciate that.

**Mr Jolin:** — and appropriately, I believe, representing the people in Sault Ste Marie as I always have. With all due respect, when this hearing is over you're still not going to hear the whole story from everybody. You still have to make a judgement on your own decision.

**Mr Stewart:** Which there is still the possibility to do, though, but at least you hear the stories that are related to what we're doing here.

**The Chair:** Now the time is up. Thank you very much for bringing your perspective to the committee this afternoon. We appreciate it.

1430

**Mr Christopherson:** Point of order, Madam Chair: I was just advised that one of the government members suggested there was all-party agreement with regard to limiting the hearings. Is that correct?

**The Chair:** No, I don't think that's exactly what was said. My understanding of what was said is that the three parties are involved in the decision-making.

**Mr Christopherson:** That's not the case, because both opposition parties wanted longer hearings. I'm still prepared to put a motion before us now, if you'll agree to unanimous consent, so we can let people hear the truth about what this bill is about.

**The Chair:** It's not a point of order, though. It may be a disagreement of opinion, but it's really not a point of order.

#### CRISIS CENTRE OF NORTH BAY

**The Chair:** We'll move on to our next presenter, Ms Vlach from the Crisis Centre North Bay. Welcome.

**Ms Kerri Vlach:** I've asked Kevin Conley to sit with me. I thank you for the opportunity to appear before the standing committee. I am Kerri Vlach. I am a worker and

I'm a Steelworker. The Steelworkers have accessible education, keeping every worker up to date on current relevant information, and the union representatives treat all the workers with respect in a democratic way. Every worker has the right to make his or her voice heard. We learn from each other and all of us contribute to changes that affect our rights as workers and union members.

I am also vice-president of the North Bay and District Labour Council. I work together with all the affiliates to maintain and protect the rights of workers. The OFL and the CLC keep me informed and aware of how changes in legislation will affect my rights as a worker and they provide suggestions and resolutions for how to protect my right.

I have serious concerns for the non-unionized workers, who do not have any margin of protection or representation looking out for their interests. If legislation is the non-unionized workers' only recourse, what hope do they have of protecting their rights as workers?

I get the impression from this government that the representatives are just going through the processes, such as standing committees, not because they want to hear what the people of Ontario have to contribute to changes in the proposed legislation that affect their lives but only because this democratic procedure was in place before the Conservatives were elected to office. I get the impression from recent bills that have been enacted against the wishes of the majority of the people that what I'm doing right now is just an exercise in futility. If you truly believe in democracy, you will listen to my remarks carefully and respectfully.

I'm not an expert on WCB or deciphering Bill 99, but I have access to representation that can and shall speak on my behalf when called upon. Why should I be concerned about Bill 99 when I belong to an organization that has representation qualified and educated on issues that affect workers and their rights? Why? Because this Harris government refuses to acknowledge or listen to the people I and many others have chosen to represent me on matters of labour. In the 17 months that this government took to create Bill 99, not once were the people who represent the workers consulted. Those consulted were employers, academics and bureaucrats.

This bill was supposed to streamline the 151 sections of the existing act, yet Bill 99 has 178 sections. I find it fascinating that this government changes the definition of words to suit its needs. I want to know how a government goes from streamlining to changing the entire purpose of an act.

Originally the purpose of the WCB was to protect the incomes of women and men whose lives were damaged and who in many cases ended their ability to work and earn a living. This system was designed to protect the worker by having those responsible for employment responsible for how the work is done compensate for

damage done. Therefore, those held financially responsible have a definite interest in the prevention of injury.

I have learned that WCB is a right that was achieved by trading other rights away. This is known as the historical tradeoff. Workers gave up their right to sue their employer in exchange for the establishment of workers' compensation.

Hypothetically, Bill 99 changes the intent of the WCA. The purpose intended is to make Ontario the safest place on earth to work, but only statistically, reduce the claims submitted but not the injuries. Money appears to count more than people. There is more emphasis on programs, such as the board's current rating program, in which the reported accident frequency and claims costs have a direct effect on the financial kickback employers received from the board each year. Experience rating is designed to distort accident statistics through the suppression of claims. Not the prevention of injury but the reduction of employers' costs will be the primary concerns of the board of directors, which will be dominated by employers.

I see throughout this bill over and over again workers you represent being forgotten, being left unprotected by the proposed changes. For instance, the requirement for workers to file their claims with the board rather than automatically occurring through the treating physician doesn't account for the people who may have difficulty filling out the form. The time of six months to apply for compensation does not make allowance for those workers who know they are sick or injured but do not realize the connection between the sickness or injury until years later. There is no provision or requirement for employers to provide a copy of their report of the accident to the worker; any misinformation or misinterpretation on the employer's form will go uncontested for months or years. Occupational stress is not recognized unless it is traumatic stress. How this government can ignore the research and the literature on work-related stress is inconceivable.

I work in the broader public sector and have witnessed the damage done by stress related to work. The definition of "stress" I have learned from the Workers' Health and Safety Centre is: "Our experience of demands and uncertainty placed upon us that we cannot control. This leads to physical and emotional disease."

I can see clearly that it makes good cost-saving sense to exclude stress-related damage as it is this government that is greatly responsible for our work-related stress. For example, we have demands placed upon us: more clients, higher-risk clients and less staff; uncertainty to restructuring — we do not know how long or when the job will be gone; loss of control — our workers' and our clients' futures lie in the hands of this government. This is stress. You may change the definition of the word "stress," but you cannot change the physical and emotional damage that is experienced.

When I look at the remodelling of Bill 99, I see an uncaring, cost-cutting business making arbitrary decisions to which there is no recourse. Instead of learning from the weakness and failings in the system and improving the act, this piece of legislation will weaken the system further.

My recommendation to you, as representatives of the people, is to start representing all the people affected by this bill. Every worker is one day away from a work-related injury. It potentially affects us all. If your purpose was to design employer safety and insurance against compensating workers for injury, then this bill achieves just that. If your intent was to truly streamline the WCA, then I recommend that you meet, consult and learn from the people who represent workers' best interests: workers' health and safety representatives, the Occupational Disease Panel representatives and labour representatives, which includes the CLC, the OFL and the leaders of the unions.

I hope you seriously consider my recommendations. I work with young offenders, and in my job as an adolescent worker I try to get the message out that one has to take responsibility for one's own actions. Every action has a consequence. If this bill is passed, are you going to take responsibility for the people who will not be protected, nor compensated for damage, injury or death? Are you going to take responsibility for the consequences if Bill 99 is passed?

**The Chair:** Thank you very much. We have just over three minutes per caucus. We'll begin with the NDP.

1440

**Mr Christopherson:** Thank you very much for your presentation. I want to focus a bit on the part of your presentation, I believe it's on page 2, where you say: "In the 17 months that this government took to create Bill 99, not once were the people who represent the workers consulted. Those consulted were employers, academics and bureaucrats."

I'm sure you know this government likes to throw — especially the Minister of Labour has a fondness for the word "fair." Unfortunately that fondness doesn't extend to implementing the reality of fairness.

You may know that the Ontario Labour Relations Act, this government's new one, as well as Bill 99, removed the word "fair" from their purpose clauses. I'd like to ask you first of all, how do you feel about the fairness of only one side of an equation, that being in this case the business community and this government's friends and not labour? Secondly, are you aware of anyone at all from the north here — as vice-president of the labour council you would be aware of these things — who was consulted at the local level by a local Tory MPP — a major labour leader, anybody at all who had any input into this bill before it was tabled?

**Mr Kevin Conley:** First of all on your second question: Nobody from the north from the labour side was consulted, no one at all. I can speak a little bit for



southern Ontario. General meetings with the president of the OFL, the government chose to take that to be consultation. General meetings aren't consultation. From our point of view, labour was not addressed; it was all one-sided.

**Mr Christopherson:** Just for the record, how do you feel about that in terms of all this fairness the Minister of Labour likes to say she's sprinkling around Ontario?

**Mr Conley:** It reminds me of living in Europe, actually.

**Mr Christopherson:** I would also point out that after pressuring the minister for months to make sure we have province-wide hearings, the best we got was six measly days, which is not nearly enough, given the number of people who are consulted. You may also know that Bill 7, the Ontario Labour Relations Act, the new one, didn't get one minute of public hearings. So not only was there no consultation; there weren't even any public hearings around that, not even a charade of public hearings, and yet we still have a Minister of Labour who wants to talk about fairness and balance.

**Mr Conley:** There's no fairness, there's no balance, none at all. I can truly say that. I can remember, when the Conservatives were in power years ago, we had more action from that party even though they weren't our friends. This government today truly ignores us. They don't want anything to do with us and that's quite clear. If you want me to rhyme off some examples, I can do that.

For instance, Mr Stewart, you asked a question of the previous speaker, that people come here and they don't give you suggestions of how to correct or amend your Bill 99. Well, you had that opportunity, sir. You had the opportunity with the royal commission and you chose to dissolve that royal commission. The second part is that you haven't approached labour. You have not approached organized labour for true consultations.

**Mr Stewart:** What do you think we're doing now?

**Mr Conley:** Let me tell you something.

**Mr Stewart:** The bill hasn't been passed. Give us your recommendations.

**Mr Conley:** Mr Stewart, do you want me to answer your question? You can throw it back and forth and try to be argumentative. In 20 minutes you can't possibly make recommendations.

*Interjection.*

**Mr Conley:** I'll make some recommendations in mine.

**The Chair:** Let Mr Maves have a question, please.

**Mr Christopherson:** And six communities doesn't constitute decent consultation on a bill like this either, Gary, and you know that.

**Mr Maves:** I have a couple of things. On page 1 it says, "I get the impression from this government that the representatives are just going through the processes," but I can assure you that in every bill I've been on that had public hearings, amendments were made. Government

members and members from the opposition listen to amendments that are put forward out on the road, and the rationale for them, and often put them forward in clause-by-clause and bills are amended. I just wanted to make that clear. The other thing is —

**Mr Conley:** The task force on rehabilitation, what happened to it, sir? It was shelved.

**Mr Maves:** That information is still there to be used.

**Mr Conley:** What about Bill 62, sir? Our amendments weren't taken in. The opposition looks at labour and the first thing they say is, "Jeez, if labour is opposing it, it must be really good."

**Mr Maves:** On page 4, "The time limit of six months to apply for compensation does not make allowance for those workers who know they are sick or injured, but do not realize the connection between the sickness or injury until years later." Actually, subsections 21(1) and 21(3) both say that you get more than six months "in the case of an occupational disease, after the worker learns that he or she suffers from the disease." Subsection 21(3) also extends more leeway to the board in permitting people if they find out later on. So there are provisions in the bill.

**Mr Conley:** There are provisions there, but on average most workers, after they've been diagnosed, 20 years later don't understand or don't realize that it could have been their workplace. Mr Christopherson mentioned the ODP. Generally speaking, without the ODP — you have to identify the disease. You have to find out if it's caused by the workplace. Without the ODP or —

**Mr Maves:** We're going to be spending more money on research into that area. It's already been announced, actually.

**Mr Conley:** I realize that.

**Mr Patten:** Thank you very much for coming out today. I would have to agree with a number of your observations.

This morning, by the way, there was a Terry Copes from the Sudbury Community Legal Clinic. I don't know if you heard him, but he said: "Bill 99 represents a major change in emphasis and purpose of the system. The system is no longer a workers' compensation system. The emphasis is no longer on compensating injured workers.... Instead, it is obvious that the change has been to making the act a workplace insurance scheme. Thus the purpose of the act becomes insuring employers for workplace accidents rather than compensating injured workers for those accidents."

I think you're saying the same thing. A number of people have brought that up and I think your observation is correct, that there is essentially a value shift in the original purpose of the act, which was a compensation no-fault scheme for injured workers. That was the primary reason. It is no longer that, in my opinion.

I suggest that in almost every area of legislation there is one area where I find people don't participate, and it's in the clause-by-clause. Clause-by-clause is the final step in the committee before it goes back to the House. That's

where you hammer out all of those recommended amendments. The government side has their recommended amendments, each party has their recommended amendments, and the attempt is, having heard what people have said, to help rewrite the legislation.

You can see how many of the recommendations from the opposition stick. For every 10, if there are that many, from the government side, you'll be lucky to get one. Sometimes they are even friendly amendments. So it would be an enlightening stage to come to that particular stage and see it, because it's very difficult to move.

The problem isn't with the members here today. It's not with them. The people who make the decisions are not even here today; not the minister's office or the minister or the Premier's office. That's part of the problem. They should be with us, hearing your comments.

I also liked your redefinition of the title of the act. I thought that was perhaps most appropriate.

If you have additional recommendations or thoughts, share them with us. We'll incorporate them into our recommendations for changes.

**Mr Conley:** May I make one more suggestion concerning extending public hearings? I don't see a need for us to be meeting in a hotel. There are a number of government boardrooms sitting idle today. Here in the city of Sudbury we have a nice stainless steel building that's empty. We have schools that are empty. Perhaps if the public hearings are that great an expense, you could have used those boardrooms that are sitting idle today.

**The Chair:** Thank you very much. I appreciate your taking the time this afternoon.

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## ONTARIO MINING ASSOCIATION

**The Chair:** I now call upon representatives from the Ontario Mining Association. Good afternoon, gentlemen, and welcome.

**Mr John Blogg:** My name is John Blogg and I'm secretary and manager of industrial relations for the Ontario Mining Association. With me today are Gary Hughes, who is general foreman, workers' compensation for Inco and chairman of the our workers' compensation occupational health committee, and Mr Larry Watkinson, who is the health and safety consultant for BLM Mining Inc. Gary is going to read our submission. It's about 12 to 15 minutes, after which time we'd be happy to answer questions related to our recommendations.

**Mr Gary Hughes:** Good afternoon, ladies and gentlemen. Let me begin by sharing with you that, with the exception of Mr Blogg, who is employed by the Ontario Mining Association, the others gathered here with me today not only at the table but in the audience are representative of not only the OMA but also various employers, including Bharti Laamanen Mining Inc, Falconbridge Ltd and Inco Ltd. Rather than deplete precious time before the standing committee, we are present today to

demonstrate our support and endorsement of the submission of the OMA.

The Ontario Mining Association appreciates the opportunity to participate in the discussions on Bill 99 as this legislation represents a major change in the workers' compensation and occupational health and safety systems in Ontario. In fact Bill 99 provides for a new era for many Ontarians and a back-to-basics concept for those of us old enough to remember what the original intent was of workers' compensation and health and safety education.

The members of the OMA applaud the Minister of Labour, the Honourable Elizabeth Witmer, and the government for having the vision and courage to restore the workers' compensation system's insurance principles and recognize the need for workplace cooperation in the prevention of injury and illness as well as the earliest possible rehabilitation of workers who are hurt or become ill. We are also pleased to see real reform in the area of workers' compensation financial accountability and responsibility.

We remind the committee that the mining industry first expressed its concerns about the workers' compensation system financial difficulty in 1984 when the unfunded liability was about \$8 million. As we know, that warning was unheeded by all ministers of labour and governments since, with the result being an unfunded liability in excess of \$11 billion in 1995.

I would also like to remind the committee that during this same period of time the mining industry reduced its lost-time injury frequency from about five injuries per 200,000 man-hours to 1.3. For the past decade, our industry has been among the three safest industries in the province and the safest mining jurisdiction in Canada.

The industry's training programs have been copied for years by jurisdictions around the world as have the industry's safe mining methods and leading-edge technological advances. Despite all of these leading indicators, Ontario's mining industry has continued to be burdened by a Workers' Compensation Board which has shown little desire to control its spending or address the inequities inherent in the system. Consequently, despite the mining industry's record of accident prevention, safety education and mining process improvements, it has not been rewarded with lower WCB costs. In fact the opposite has occurred, with our industry's costs increasing from about \$58 million in 1984 to \$142 million in 1995.

As such, it should come as no surprise that the OMA continues to be an advocate of major reform to the workers' compensation system and supports many of the changes to the compensation system proposed in Bill 99. We believe Bill 99 is needed for the province to eliminate the unfunded liability, control the occasions of employer-employee abuse of the system and also attract investment into this province.



However, Bill 99 does fall short in areas, specifically, in areas which drive the costs of the system for our members and those which have created unnecessary debate between employers and employees over the years; as an example, the failure to address the definition of "accident."

Our presentation will focus on those areas we believe require reconsideration by the minister before enacting Bill 99. We believe we have provided alternatives which will improve the bill and thereby the compensation system in this province.

The Ontario Mining Association welcomes the opportunity to respond to Bill 99, An Act to amend the Workers' Compensation Act and Occupational Health and Safety Act.

The OMA represents the collective interests of the mining companies in Ontario and many of its suppliers of services. The mining association was founded in 1920 to provide governments and the public with the views of the industry on issues which affect the economy and wellbeing of the province and its citizens.

Ontario's mining industry has served as a model to government and other business sectors on how to fairly and effectively comply with the intent of the workers' compensation system in the province. We have a history of treating our workers fairly and compassionately whenever they experience the unfortunate consequences of a workplace injury. Our members engage their workers in attempts to return them to full recovery and employment as quickly as is medically feasible and attempt to resolve their problems with the Workers' Compensation Board whenever warranted.

The Ontario Mining Association acknowledges that the reforming of the workers' compensation system is long overdue, as the system has clearly lost its focus. This has become expressly apparent during the past 10 to 15 years when the system became more of a social safety net than a wage loss insurance program. Consequently, it has become difficult for our members to continue to support some claims by its employees as too often they are for injuries or diseases of ordinary life. Also, we believe the system's benefit level has become a deterrent to people wanting to return to work as quickly as medically feasible. This has negative repercussions on workers and company-initiated programs designed to assist the rehabilitation of injured employees.

The Ontario Mining Association has attempted in this submission to provide the government with reasoned comments and recommendations to the proposed reforms of Bill 99. For example, we continue to promote changes to the definition of "accident," even if it is merely changing the phrase "accident includes" to "accident means."

We were disappointed at the minister's decision to not include her promise of a three-day waiting period for benefits. We understand the concern which caused the minister not to include it in the bill. However, we believe

that the decision was based on misinformation about the New Brunswick waiting period and have included in our submission a letter of explanation from its chairperson. In addition, we are proposing that injuries involving serious injury or death have any waiting period waived.

The removal of future economic awards is a welcome change as they were mismanaged from their beginning, with inconsistent application which often treated workers and employers unfairly.

We support the amendment of the benefit level from 90% to 85% of net as this will reduce much of the unintended overcompensation of workers whose disability was less than six months while still ensuring a fair level of wage loss for workers during their recovery period.

With respect to appeals, we welcome changes to the authority of the Workers' Compensation Appeals Tribunal. However, we believe that the minister needs to reconsider some of those changes and have made some recommendations in this area. For example, we question the minister's intent in limiting employers' right to appeal as it appears to create an injustice which the minister may not have intended.

We are pleased that the minister has placed a premium on the safety of workers and moved the responsibility for accident prevention inside the Workplace Safety and Insurance Board. We believe that the relationship between good accident prevention management and workers' compensation performance is indisputable.

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We also agree with the need for objective scientific research and administration of disease claims. The minister's decision to move the function of the Occupational Disease Panel inside the new Workplace Safety and Insurance Board we believe will produce more fact-based, objective and scientifically valid research into the causes of diseases experienced by workers. We are confident that workers, employers and the public will be better served by this process and look forward to assisting the Workplace Safety and Insurance Board in its research of diseases involving miners to ensure that good science, valid conclusions and fair treatment of workers is the result.

The Ontario Mining Association thanks the Ministry of Labour for its efforts in the drafting of the Bill 99 amendments to the Workers' Compensation Act, which we believe attempt to ensure fairness and equity in the treatment of injured workers and for the employers who fund the system. We trust that you will find our comments and recommendations helpful.

At this time I would like to just take a few minutes longer to briefly summarize our recommendations. The Ontario Mining Association recommends the following:

(1) That the definition of "accident" be amended by deleting "accident includes" and adding "accident means."

(2) That the government review section 4, the functions of the board, with respect to the use of these powers with federally regulated employers.

(3) That the minister designate the sectors for representation on the health and safety advisory council, section 5.

(4) That mental stress be compensable where it is an acute reaction to a traumatic event where employment has been established as the predominant cause.

(5) That mental stress should not be compensable when (a) the work is not the predominant cause, (b) normal personnel activities are involved, or (c) the condition cannot be described as an Axis I mental disorder under DMS-III-R psychiatric classification criteria.

(6) That Bill 99 require scientific and medical validation of workplace causation for claims for occupational disease and that there be a change in the pricing model of the WCB for occupational disease.

(7) That because the "functional abilities" information is critical to Bill 99 and also to successful return-to-work programs, it must be provided as section 21 is currently drafted.

(8) That the minister amend section 22 to ensure the board has the responsibility to consider all income of a worker prior to making a determination of their real wage loss.

(9) That section 42(5) be amended to require the board to consult with the employer and health care practitioner when developing a labour market re-entry plan.

(10) That Bill 99 ensures workers who cooperate with their employer and the board's labour market re-entry plan are not disadvantaged because the LMR was the wrong plan for effectively addressing the needs of their specific disability.

(11) That the minister amend section 44 to permit the board to re-examine an award when there is evidence that clearly demonstrates a change in the worker's earnings profile from that at the time of the 72-month review.

(12) That the minister amend the drafting error in section 46(2).

(13) That the minister reconsider section 61(2), as it has the potential of adding people to the welfare rolls.

(14) That Bill 99, section 80, be amended to permit the tribunal to hear section 80 appeals.

(15) That the minister repeal section 84, as the penalties for failure are adequately addressed in section 40.

(16) That the minister amend section 86(5) by deleting "as a penalty, shall pay the amount again to the board."

(17) That the minister repeal section 86(6).

(18) That the minister amend section 95 by providing legislative language which puts the second injury and enhancement fund into the act.

(19) That the minister amend section 116 to ensure that the current mediation process of the board is changed to an interest-based model or, alternatively, that the board mediation process be discontinued.

(20) That the minister accept the position of the Employers' Council on Workers' Compensation with respect to amending section 118 and the role of the appeals tribunal. In particular, the Ontario Mining Association endorses all 10 principles of the model proposed to the standing committee by both the ECWC and Mr Les Liversidge.

Thank you, ladies and gentlemen. At this time we would gladly entertain any questions you may have.

**The Chair:** There are six minutes remaining for questions, two minutes per caucus. That means short answers and short questions. We'll begin with the government caucus.

**Mr Maves:** Thank you for your lengthy and detailed presentation. Out of all this, one question. I think we should clarify something that came up today. An earlier presenter said that the OMA, your group, supports keeping the independent ODP, and in here you don't seem to agree with that assertion. I wonder if you can clarify your position on that and your position on ODP research.

**Mr Blogg:** I'll respond to that one. The Ontario Mining Association has for some time been unhappy with the Occupational Disease Panel. We do not believe that as a bipartite organization and with the results of their work, specifically IDSP reports 12 and 16, and there are a couple other papers they've put out, that their research is of a high quality. In fact IDSP 12 and 16 have been highly criticized by independent medical and scientific authorities outside Ontario, let alone within the province, people who are recognized internationally as experts in epidemiology.

As a consequence of that and because we believe, and have for some time, that disease is really going to be the driver for all sectors — the mining industry was caught first — disease research needs to be done and done well. The perspectives must be based on scientific norms so that when you get the results there isn't the kind of acrimony we've seen around the past ODP reports which have been found to be flawed in their scientific process and in their conclusions.

The scientific evaluator of a couple of them for us was a former member of the IDSP and a PhD, and he was critical of his former employer. We are very uncomfortable with the ODP as it currently is structured as a bipartite organization with non-scientific people on the panel.

I think that moving the research function inside the board will be better. We applaud the minister's commitment to putting more research into occupational disease, and I think in the long term when it comes to workers who suffer from occupational diseases, such as our nickel sinter and smelter workers who had nasal and larynx cancer, where our industry accepted the science was valid, accepted our responsibility and agreed to have those paid, we believe that kind of good-quality research will come out of this change in the bill.



**Mr Maves:** Thank you for that clarification.

**Mr Patten:** I'd like to follow on the same question. We had some information shared this morning which showed that both Inco and your association used to be supporters of the ODP in terms of its degree of independence. It can never be off the wall and totally unrelated to it, so we're talking about to what degree.

The worry is that it may be in a position where it can be compromised if it is prepared to look at or feels it should be looking at workplace diseases that are of concern and it has a lead on certain possible insights. Your submission a year ago said you supported its independence; two and a half years ago, Inco did as well. Now all of a sudden there seems to be a change. Is it in the substance of what they do? I wonder if you would both address the issue of the independence of the ODP.

**Mr Blogg:** At the time — and that was probably a March submission of ours with respect to the Cam Jackson report — we had felt that an independent body with good research criteria would probably serve the interests of everybody quite well. But since that time the ODP has put out a number of reports, most of which have been found by the international scientific community to be flawed. We therefore, after discussion within our industry and with people outside our industry, said that if you put the right parameters around the board's research, that is, a prospectus goes out and you go out to the scientific community and not keep it necessarily in-house, but the board is the one that lets the scientific research contract out, much as today they ask the ODP to do research, they would do the same thing, but they would have the research let out to professional researchers at universities; for example, people like Dr Muir. Then that would be equal, in our view, to the independents we talked about in our Cam Jackson report.

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**Ms Martel:** I think you do a disservice to the members of the panel by suggesting that their research is flawed and that there are not enough scientists on it. We heard a remarkable presentation this morning from Homer Seguin, whose credentials are impeccable, who listed any number of people internationally who had any number of qualifications who support the continuation of this panel.

Let me just remind you of how industrial diseases were compensated when the board dealt with industrial disease, which is obviously the scenario you wish to refer to or return to. In its 11 years of existence the ODP has exposed more occupational diseases and their causes than the WCB did in 70 years, and that will be the track record we will see in Ontario when the ODP goes back into the WCB.

Your position as an association has changed dramatically in a single year when you made a presentation to the Jackson committee. I want to ask you if that is not because Inco and Falconbridge have decided they don't want to pay for industrial diseases for people who have

suffered and whose widows are now left. Isn't that the real reason we're seeing the change in attitude from the OMA today?

**Mr Blogg:** Ms Martel, you'd be amazed how science has progressed over the last seven years. The reality is that because —

**Ms Martel:** The board sure hasn't; nor will they.

**Mr Blogg:** The board was a far cry from what it's going to be under your government as well. I can tell you that the reason diseases are found now and the reason Inco in fact has been involved in doing a lot of research into occupational disease is because the technology and the science have evolved to the point where we can now get more concrete evidence and we have the cohorts now to do the kind of science that couldn't be done seven or 10 years ago.

Our position on the ODP hasn't changed in substance. We still don't believe the current ODP as a bipartite structure with people representing constituencies and private agendas can possibly be as good as a WCB which is funded and supported by —

**Ms Martel:** Funded by employers.

**Mr Blogg:** It's supported and it's meant to improve the lot of the stakeholders, who are the workers, the employers and the citizens of this province.

**The Chair:** Thank you very much. That concludes the presentation time. We appreciate —

**Mr Hastings:** Point of order, Madam Chair: I'd like to request that Mr Blogg submit to this standing committee the letter from the PhD who used to work for the IDSP questioning some of their standards in terms of the decisions they made on some of the cancers, and also any of the ODP papers that have been questioned substantially by the international authorities, epidemiologists particularly, questioning some of the techniques used by the IDSP, especially back when they started in 1977 on laryngeal cancer in the mining industry. Could you do that, Mr Blogg?

**Mr Blogg:** We can give you our submission we submitted on IDSP-12.

**Mr Hastings:** Thank you. I'd appreciate that, and the letter as well if that's available.

**Mr Blogg:** He was one of the researchers. It's in that document.

**Ms Martel:** Point of order, Madam Chair.

**The Chair:** Excuse me just one moment, please. That's actually not needed as a point of order. It can be just asked for as a point of information.

**Mr Hastings:** I just wanted to make sure the researcher gets that.

**Ms Martel:** I would like to request that research then also, on behalf of the committee, get the documentation from all of those 1,500, I assume — it was said this morning in the brief — supporters of the ODP, many of them, we saw from the presentation this morning, international experts in research both at the university and health sciences level, see their credentials as well and

what they have to say about the ODP. I request that the committee also ask for that information.

**The Chair:** Duly noted. Gentlemen, thank you very much for your presentation.

# UNITED STEELWORKERS OF AMERICA, LOCAL 6500

**The Chair:** I now call upon representatives from the United Steelworkers of America, Local 6500, Mr Fraser and Mr Conley. Welcome again.

**Mr Kevin Conley:** I bring Mr Fraser's regrets. He was unable to attend today, so Denis Dallaire will be sitting in with me.

I'd just like to make one general comment. In all my years of working in compensation — not as many as Mr Seguin but getting there — in all these years of round tables, royal commissions, task forces, public hearings, I've never seen the need for, or I've never seen, policemen at the door or sitting in the audience. That really concerns me, that the government of Ontario has to have policemen at a public hearing. It's almost like we're in the US now. This government certainly has taken us down a different path.

Saying that, I'd like to start on a positive note. I think we all agree that the Workers' Compensation Act needs change. However, there's a big difference between change and reform. This Bill 99 reforms every section of the act and not to benefit injured workers. Historically, the Workers' Compensation Act was designed to meet the needs of injured workers and eliminate injured workers having to sue their accident employer for fair compensation.

This Bill 99 is pro-employer, anti-worker legislation.

On February 17, 1997, Elizabeth Witmer confirms this from my interpretation, and I quote her: "These are key themes of our reform proposals. The changes to the workers' compensation system promote economic growth and job creation" — she goes on to say, however — "while at the same time ensuring that Ontario workplaces are among the safest in the world." A pretty powerful statement.

**Consultation:** Too many times governments amend legislation and charge the bureaucrats with this task. The sad result is many times government doesn't understand or foresee the results of its own amendments, and I give you an example: On February 17, 1997, a letter to me from Elizabeth Witmer refers to functional abilities evaluation access to employers, and that it is not considered medical and how important the FAE is for the accident employer regarding return to work. Well, this is very true. However, employers have this access without Bill 99 already. The minister really does not address my concerns of November 15, 1996. This reinforces my opinion that the minister doesn't know the current act. I ask you, how can one promote change without knowing the current act?

True consultation must be in a committee format. The committee must be made up of experienced stakeholders concerning the act.

**Prevention:** The Minister of Labour, Elizabeth Witmer, has relayed over and over again that the primary focus of these reforms is to promote prevention. It's clear to me and many others that Bill 99 can't deliver this goal. Reducing benefit levels, changing the name of the Workers' Compensation Board and the Workers' Compensation Appeals Tribunal, bringing the Occupational Disease Panel and WCAT under the umbrella of the board, outlawing stress-related claims and so on do not prevent accidents. What it does is it hides accidents and intimidates injured workers, especially in the non-organized workplaces.

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The Ontario fact sheet of June 18, 1997, I think confirms my opinion that Bill 99 can't deliver prevention, and I quote: "The ultimate responsibility in individual workplaces rests on the workplace parties — employers, workers and unions. This is known as the internal responsibility." All these references I make are in an appendix at the back of the transcript.

One must wonder if the act is to prevent accidents. The fact sheet admits that the amendments must be flawed because now it's shifting the intent of the reform back to the employer and the worker.

In the present legislation, the Occupational Disease Panel has a clearly defined role to play in investigating possible occupational disease. Subsection 95(8):

"(a) to investigate possible occupational diseases;

"(b) to make findings as to whether a probable connection exists between a disease and an industrial process, trade or occupation in Ontario;

"(c) to create, develop and revise criteria for the evaluation of claims respecting occupational diseases; and

"(d) to advise on eligibility rules regarding compensation for claims respecting occupational diseases."

Subsection 95(11) says, "The panel shall report its findings to the board."

In the present legislation the board has an obligation to publish the findings of the ODP and allow for public comments before making a decision on any findings or recommendations of the ODP. This allows workers, employers, health and safety professionals and other researchers the opportunity to provide input into occupational disease issues going before the board.

Bill 99 deletes section 95 of the current legislation and makes no mention of the ODP under the proposed legislation. Clearly, the ODP loses its independence and eventually will be dissolved. Elizabeth Witmer feels that the board and stakeholders will be better served if the ODP is integrated into the WCB. That's in appendix 3. However, I differ from the minister's opinion. How can we trust the board when they recently delayed adjudication of lung cancer claims for hardrock miners under this government's direction? It is unjust to these workers and



survivors that we had to begin a lawsuit against the WCB in order just to rule on entitlement after two years of delays. To add insult to injury, only two adjudicators were assigned to the lung cancer claims on top of their regular caseloads.

I find this interesting. It's not in my report, but I'm going to make this comment anyway. The Ontario Mining Association's representative who used to chair their safety and health committee, who sat on the ODP and still sits on the ODP, fully supported report 12 which said that there was a causal relationship between lung cancer and hardrock mining. Guess what, folks? He doesn't work for Inco any more. I wonder why.

WCAT in a number of cases has granted entitlement for these miners with cancer. In decisions 192/95 and 286/95 — that's only a couple; I didn't want to fill the whole back of the transcript with decisions — the tribunal makes reference to the board's inability to schedule and/or provide policy for these claims where there is overwhelming scientific evidence to support these claims. I wonder why WCAT is being moved under the board's structure.

WCAT: Taking the tribunal's independence away is another means of control. The new proposed legislation limits the tribunal's ability to make decisions and will become another rubber stamp in the future.

Bill 99 severely limits the tribunal; scientific evidence, benefit of doubt judging on its own merit, outlawed diseases will no longer play a role in their decision-making. Taking the tribunal's independence away would be comparable to the federal government dissolving the Supreme Court of Canada when their decisions are not in favour of our federal government. The government, in a true sense, is taking the cornerstone out of our democratic way of life by limiting the appeal process.

Privatization: While Mike Harris was in opposition he criticized daily the actions and the workings of the WCB. I watch that channel too, by the way. If the previous government had spent millions and millions of dollars on changing the name of the WCB and WCAT, Mr Harris would have been outraged.

Changing the name of the WCB and WCAT clearly indicates this government's true agenda, and that is to privatize the board. This process has begun. The previous speaker said there were some changes being implemented without the bill being passed. Well, there have been, and the health care department is now being administered by Rx Plus, a private insurance company. The restructuring plan of the board has no vocational rehabilitation services. Guess where that's going. The new plan is in appendix 6, an official board document.

From personal experience I can truly say that if you think vocational rehabilitation within the board is not working, wait until insurance companies take over. Insurance or private companies will not look out for the injured worker's best interest, only to place the injured

worker back in the workforce whether the work is suitable or not. Their goal is purely financial.

In closing, I wish I had the time to go through the proposed legislation with you section by section. Unfortunately, there's not enough time in 20 minutes. I urge you that when you're preparing your report to the government from these hearings you strongly suggest scrapping Bill 99. The current legislation just requires some fine-tuning.

**Mr Patten:** We don't have much time. We've talked a little bit about the ODP. I want to ask you a question about the appeals tribunal. If indeed its function before was to identify what was out of whack with the board's procedures and advise it, and therefore adjust it as a growing and changing organization to changing realities, if it's going to be in a fixed position, does that suggest there will be more and more litigation, do you think?

**Mr Conley:** I thought of that, but I can't agree with you because I think Bill 99 affects the charter, when you have legislation that says, for instance, on workplace stress: "We're not going to cover it. However, you can't take it to court."

**Mr Patten:** That could be challenged.

**Mr Conley:** I think that's got to be challenged under the charter. You're telling the people of Ontario: "We're not going to cover it. However, you can't sue your employer either." So yes, I think that will be challenged under the charter. There will be a number of things that will be challenged under the charter, I believe.

Just to expand on that, the average charge — I don't know if any of you are familiar. Maybe Mr O'Toole is familiar with the charge for a fatality. Lord knows, we've been through a lot of fatalities in this community. It's \$450,000.

I'll tell you a little story about Manitoulin Island. A young fellow was swimming or was at a pool party and had a few drinks. The owner of the camp told him to quit diving off the roof into the swimming pool. He didn't listen. However, he kept on diving and as a result he's now a paraplegic. He sued his friend. He received millions of dollars, over \$3 million in a lawsuit. He was intoxicated, so that's wilful. He didn't listen to the owner of the establishment and yet the owner of the establishment still had to pay.

Now if you think, and if the employers think, that \$450,000 is too much money to pay for a fatality, let me tell you, we'd be quite willing to challenge that in court. Let us have the tort system if you're going to take away our rights, because I'll tell you on thing: \$3 million adds up pretty quickly, especially in this community with the number of mining fatalities and diseases we have.

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**Ms Martel:** Mr Conley, you've been doing workers' compensation for Local 6500 for a number of years now, and your local as well has dealt with a number of industrial diseases that have been caused by the workplace, in cooperations. Can you tell me what you

think will happen with respect to industrial diseases and compensation of the same when the functions of the ODP are put in under the board again?

**Mr Conley:** I sat as the labour member on the nickel consulting process. It was mentioned by the Ontario Mining Association that we scheduled nasal cancers for sintering plant employees. Much to my amazement, I found through those proceedings — it took us a year to do that, something very simple: one year to schedule that. The board told me that they had all this information for years. They knew about the nasal cancers. Sixty out of 65 workers contracted nasal cancer within two years, a two-year latency. I'm not talking about exposure. Within two years of working there, they contracted lung cancer. You don't get lung cancer from smoking in two years.

They had all that information. It took us years and years to find out, and it wasn't until we had a round-table discussion that we found that out. If you think bringing the ODP under the umbrella of the WCB is going to streamline it and you're going to get better research, you're sadly mistaken. The people who sit on the ODP now — there are medical people on there, there are epidemiologists, there are lots of qualified people. If you look at their credentials, they're well established within the medical community.

It's not what the Ontario Mining Association would have you believe, that it's all laypeople who sit on the ODP. The laypeople who sit on the ODP only bring the common sense to the table.

**Mr Hastings:** I'm wondering if you could recall what Local 6500's reaction was when the previous regime and minister for the WCB removed the initiative — I guess it was called a task force on workplace stressors — that was established approximately in January 1993. Despite all the fiscal crisis that was going on, there were maybe three to four hearing dates held and then they withdrew the initiative.

**Mr Conley:** Yes, sir, they certainly did.

**Mr Hastings:** Why?

**Mr Conley:** Mainly on the part of labour, because we couldn't come to an agreement. The employers had their submissions — there were a number of submissions — and we made submissions. The saw-off, we felt, wasn't favourable, so we agreed at that time that we should go back and have further discussions. So it wasn't thrown off the table, and we still had the right to go to WCAT if we felt our cases were strong enough.

There were six claims allowed in Ontario for stress, if I'm not mistaken. I represented one of those claims, and I brought that individual to the public hearings. What was quite interesting is there wasn't a dry eye on the panel or in the audience after he spoke. Right after that, there were no more injured workers allowed to come.

The other point I'd like to make about the stress factor is that we still had the right to go to WCAT, and your government has taken that right away from us. So there are no more real merits in the case. I'm not going to sit

here in front of you and say, "Yes, every stress case should be compensated," but there was another time the WCB came to Sudbury for a round-table conference, and it was about workplace stress, because that was a spinoff from those public hearings. I don't know if you were aware of that. They travelled the province also.

It was amazing. One employer said to me, "People come to work for us and they know that it's very stressful, so they should know that they may get sick, but we shouldn't be compensating those people because they knew they may get sick from coming to work with us." That's on record, sir, within the board. We know, miners know, when they come to work that they may be killed tomorrow. Policemen know that when they go on the job, they may be killed that day. So what do we do, stop compensating them because we know we run that risk?

**The Chair:** Mr Conley, our time has expired. Thank you very much for your input this afternoon. We appreciate it.

**Mr Conley:** Madam Chair, could I make one quick comment for Mr Stewart's behalf? My recommendation is to leave the ODP independent and the tribunal independent in order to have fair compensation for injured workers.

**The Chair:** Duly noted.

## SUDBURY AND DISTRICT LABOUR COUNCIL

**The Chair:** Mr Filo, please, from the Sudbury and District Labour Council. Good afternoon, sir.

**Mr John Filo:** I'd like to present you with this cap as a souvenir of the hearings here in Sudbury. I think, looking back on it years from now, it'll be something of a reminder of this session.

**The Chair:** Thank you. Welcome.

**Mr Filo:** Thanks very much. I want to welcome you to Sudbury, especially some of the members of your caucus, because I think Sudbury's a very important part of our community. We want you up here so you can talk to the grass-roots people. But I'm also a little perplexed with what I've read. One of the local reporters, a journalist, has quoted Bart Moves as saying, "These hearings, 30% of the seats go to us, 30% to the Liberals and 30% to the NDP." He said, "Quite frankly, most of the comments are partisan and not very helpful."

We've heard a lot of partisan comments here, especially from your caucus. When a minority report from a member of the ODP suddenly finds such great significance, when the minority of the Liberals and the minority of the NDP submissions are cast aside so casually by Bart, it seems to me there's no symmetry there. We're all partisan, but we all subscribe to a certain code of decency, fair play, responsibility and accountability. That's why we're here.

My background in workers' compensation is that I sat on a task force, the chairman's task force of the WCB that dealt with vocational rehabilitation. I was a member



of the regional advisory group. It had some effect. We had a local director here who ran the local office of WCB very badly, and as a result of our report he went on to pursue other career interests.

I find that your government is becoming very constructionist, legalistic and very ideological. My presentation today is actually an appeal to your sense of history. My colleagues have already remarked, and will continue to do so, how Bill 99 encourages employers to suppress WCB claims, giving employers unprecedented power over injured workers. In fact, in our fraternity, people have jokingly referred to Bill 99 as the "Employers' Compensation Act."

My colleagues will argue that Bill 99 forces an injured worker's physician to provide medical information to the worker's employer. We've certainly come a long way from the sacred confidential regard in which medical information has been traditionally held. Some of you served in the Legislature and witnessed the resignations of several ministers who had breached the confidentiality of such material. This bill, however, grants a special dispensation to an employer by virtue of his socioeconomic status. Privileged communications between an injured worker and his priest and/or his lawyer, I expect, will be targeted if Mike Harris is re-elected in 1998.

1540

My colleagues maintain that this bill introduces new measures to assist employers in hiding their real accident statistics and costs. My colleague the world-renowned work-related disease authority Homer Seguin will mourn the cessation of independent research on occupational disease. My colleagues decry the fact that inflation protection is cut by 75% for most unemployed workers with disabilities and that employers will force injured workers back to work, further endangering their wellbeing. Every worker knows that stress is present in the workplace, but especially so in the workplaces of the worst employers, yet there will be no compensation for it. And for what has been a cornerstone representing justice in our society, there will be no right of independent appeal of WCB decisions: no justice, no peace. We in the trade union movement have become very sceptical and I believe distrustful of the government's efforts in the labour-management sphere and its general approach to our societal problems.

What this government has done to the homeless, as personified by Irwin Anderson, Eugene Upper, Mirsalah-Aldin Kompani, Richard Roy, Garland Sheppard and William Hunta, real people who died on the streets of Toronto, what this government has done to our aboriginal people as exemplified by Dudley George, what this government has done and is doing in Metro Toronto despite the wishes of the people, and what this government has done to our environment, it now is intent on doing to injured workers through Bill 99.

To a unionist, for example, "flexible" means the playing field is tilted towards the employer. "Minor house-

keeping" means that some of the rights and privileges that our grandfathers and grandmothers and fathers and mothers fought and bled for on picket lines half a century ago are about to be scrapped.

The UN Human Development Report for 1996 ranks us first among 174 nations, beating out top contenders like the United States and Japan for the fourth time. I submit that the overriding reason for this is because of the manner in which our society in Canada, and particularly in Ontario, has determined an appropriate balance between employers' rights and workers' rights, influenced by the demands of the trade union movement.

As school children, we all cheered upon learning how the barons in 1215 exacted some power from King John in the signing of the Magna Carta at Runnymede, thus limiting to a slight degree his penchant for arbitrariness.

That unions are an essential fact in a democracy was aptly illustrated by the insistence of the Allies at the end of the Second World War that trade unions and collective bargaining be recognized in the constitutions of Germany and Japan. What better guarantee that tyranny and totalitarianism would not return to those countries? We don't have that in our own Constitution.

Before I settled in as a professor in a community college, I earned my living as a mineral exploration geophysicist. I have lived, worked in and visited every continent with the exception of Australia and Antarctica. I regret to say that of the 170-plus countries in the world, the only ones worth living in can be counted on the fingers of both hands. The quality of life that we enjoy in Ontario did not happen by accident. And no, it is not our vast natural resources that are the most important factor in this. It is our acceptance of the work ethic, a positive attitude which incorporates the honour system in dealings we have with one another and the government, the high average level of education and training of our citizenry, and a recognition of the balance required between capital and labour.

It has been established by objective social scientists and economists that a society that has adopted mechanisms which result in a more equitable distribution of wealth and resources actually has a stronger economy. This is not to say that a strong economy is evidence that such mechanisms are necessary, or for that matter that democracy is necessary for a strong economy, but we in Ontario have chosen a tradition where individual and collective rights are exercised in the context of a democracy that is almost universally admired and envied. Unions have engendered the evolution of this society. More than 100 years ago, for example, unions campaigned for health care, unemployment insurance, pensions, free public education and just compensation for injured workers.

The usual perspective offered in the case of employers is that injured workers, because of the discipline of the marketplace and the requirement to be competitive, must pose the least possible burden to the enterprise. But we

know that there is no such thing as a self-regulating, free and neutral private marketplace.

My colleague Neil Brooks of Osgoode Hall has opined that its proponents assert that any interference by government regulation or taxation to the property rights acquired in this marketplace is unjustified interference in the nature of things. In fact, this free market is comprised of commercial exchanges that are regulated by countless detailed and complex rules of property and contract law. None of these rules sprang from nature or were ordained by God. They're the result of legislative outputs shaped by the political process, and as anyone with a passing knowledge of legal history knows, the rules, including Bill 99, were largely fashioned to protect and further the private interests of the wealthy and the economically powerful. The labour movement believes that injured workers are entitled to just treatment as a fundamental right, implicit in the democratic system. The ideology that preaches that bigness is only appropriate for the employer and that establishes rules that favour the employer does not recognize the need for balance in our institutions.

In the workplace, there is no level playing field. Some of the presenters have pointed out to you the imbalance that exists between a worker and his employer. The control exercised by the powerful cannot be absolute but must be subjected to checks and balances. Bill 99 for injured workers removes virtually all those checks and balances.

So I'm here to appeal to you, as I started out by appealing to your sense of decency, fair play, responsibility and accountability. Let's not make this an employers' compensation act. Let's get back to basic principles; let's look after the injured workers. Thank you.

**The Chair:** There are slightly under two minutes remaining per caucus.

**Mr Laughren:** John, welcome to the committee. Your report is different than most we've received because it is somewhat philosophical in its approach. I appreciate the way you stand back and take a look at it.

Maybe you could help me out here, because I've always thought that traditionally Tories were very strong proponents of the work ethic. They always said that they supported the work ethic, certainly more than the NDP. That's what they always said. What puzzles me here, and maybe you can help me as an academic — you, not me — is why workers would be penalized for carrying out their belief in the work ethic by going to work every day, and how it is that you justify penalizing people who have carried out that commitment to the work ethic by going to work every day. I don't know how you justify that by what you're doing in this bill. It puzzles me, and I need help from an academic.

**Mr Filo:** I'll tell you that years from now, when we look back at the Harris government, there will be a lot of questions that not even the people who are participants in

the government can answer. For a party that believes in small, non-interventionist government, it has been the most blatantly interventionist government in the history of Ontario. It has virtually ignored the wishes of great numbers of people. As I mentioned earlier, in the Metro Toronto case the referendum was quite conclusive, and yet they have their minds made up; they don't want to be bothered with facts.

Your question's a tough one. It's going to be up to historians to look back and see why this anti-worker movement took place here in the late 1990s just as the millennium was approaching, because there seems to be no rhyme or reason to it. We've carved out a very caring, compassionate society in Ontario. We've come to the conclusion that we have to look after the vulnerable in our society, yet along comes a government that said: "Vulnerable, schmulnerable. We're going to cater to the multinationals. We're going to cater to the powerful." It's up to historians to analyse that situation and hopefully, Floyd, to provide you with an answer.

1550

**Mr O'Toole:** Thank you for your presentation, John. I've heard you present before at one other hearing here in Sudbury so I'm really familiar with your line of thinking. I mean that as a compliment. You mentioned here, just to get to know you a little bit, you're a professor at a community college. What particular area?

**Mr Filo:** I'm a mineral exploration geophysicist.

**Mr O'Toole:** That's what you teach at college.

**Mr Filo:** Yes, I search for minerals.

**Mr O'Toole:** Metals and things, yes. Thank you for that. You made a point there where you say, "It has been established by objective social scientists and economists that a society that has adopted mechanisms which result in a more equitable distribution" — sort of a socialist view. Why equitable distribution of wealth? What's that about?

**Mr Filo:** You say, "Sort of a socialist point of view."

**Mr O'Toole:** I'm just trying to discover where you come from.

**Mr Filo:** These are people who are legitimate social scientists who have established that. Yes, it may be a socialist view, but it's not written by a socialist economist.

**Mr O'Toole:** Sort of like eastern Europe.

**Mr Filo:** No, not eastern Europe. That, Mr O'Toole, is an obscenity, to say that eastern Europe was socialism.

**Mr O'Toole:** Well, equitable distribution.

**Mr Filo:** Where do you learn your politics? You were here earlier and you challenged somebody by saying that the big OPSEU union, the Goliath union is challenging the David of the Harris government. Where do you come from with that sort of perception? Who makes these laws, the unions or the government?

**Mr O'Toole:** I think they're fairly well resourced.



**Mr Filo:** The government is much more resourced than anybody, and you guys have been wielding that power in a very blatant, abusive way.

**Mr Patten:** Thank you, Mr Filo. I appreciate your document as well, and your thoughts. I'm not a socialist, but I'm a Liberal, and I'll tell you, I have no trouble with your statement at all, that in observations, having travelled 65 countries of the world, the societies that have a fair distribution have a stronger society, I believe, leading to a stronger economy. I have no trouble with that.

By the way, as to your comment at the beginning, just for the record, lest some people who aren't aware feel that the committee is divided up 30%, 30%, 30% by the three different parties, it's actually a majority of government members; the opposition members are in a minority. That has a big impact on decision-making. When decisions happen, believe me, while it may be by the whole committee through a majority vote, it is not by way of consensus and agreement.

**Mr Filo:** The comment was on the presentations; in fact the 30% of course is an obvious error because it should be 33<sup>1</sup>/<sub>3</sub>%, but I didn't want to be picky with Bart the way he is with us.

**Mr Patten:** On the presentations, yes.

**Mr Filo:** The presentations.

**Mr Patten:** All right. I thought it was in terms of other things. I wonder if you might elaborate on your final comment for us, that is, that Bill 99 removes virtually all of the checks and balances. Which are the ones that are the most pronounced? They have been identified, but I'd like to hear your comments.

**Mr Filo:** If you look at what characterizes the profile of many of the bills that this present government is passing, one of the features in it is that there is no appeal procedure. This is a fundamental right. People have died in wars to have an appeal procedure. If you've ever lived in some of these other countries — and you say you've travelled in them — you know we have a really good thing here. Why a government should want to take away an appeal procedure is beyond me. That's what's happening in this WCB. It's becoming overly bureaucratized. The regulations are going to be written virtually by political appointees.

**The Chair:** Thank you, Mr Filo. That concludes our time. We appreciate your advice this afternoon.

**Mr Filo:** Thanks again for coming to Sudbury.

#### MINE MILL LOCAL 598/CAW

**The Chair:** I'd now like to call upon Mr Hrytsak from the Canadian Auto Workers, please. Good afternoon. Welcome. Please begin.

**Mr Gary Hrytsak:** Good afternoon, Madam Chair. Thank you for having us here today. Those of you who have the brief in front of you will notice on the facing page, if you've got it, it actually says, "Presentation on Bill 99 to the Mayor and City Council of the City of Sudbury." Maybe it would be advantageous if it was

passed out, because this is part of the reason we're here. I didn't feel it was appropriate to have to write a particular brief directly for this gathering because this and the Canadian Auto Workers' brief that was put forward in Toronto to this panel contain all of the elements that are necessary. But I wanted you to see the brief we put forward to the city of Sudbury in regard to Bill 99, and then I'll read to you the results of that brief as passed by the city of Sudbury unanimously. It is in two parts, and I'm not going to go through the whole thing.

My colleagues who have come before me have spelled out all of the major issues labour has. But on a personal note, having been in the system for well over a decade and having been part of the industrial disease process at the board, but more importantly as an advocate for injured workers, I have to say I sympathize with the employees of the Workers' Compensation Board today. I find many of them are hardworking, conscientious individuals. But that is thwarted by bureaucratic political intent, and particularly by this government's intent with Bill 99, to reward their benefactors in the industrial sector and thank them for, no doubt, some very generous assistance during the last campaign. I'm not here to damage any individual within the board's structure; they simply have to work with, sometimes, the garbage that's given to them by politicians.

The result of this particular brief is this document. This document is a proclamation. In fact, it was presented by Mayor Gordon, who himself is a Conservative and could not stand the thought of the reforming of the Workers' Compensation Act by this government.

**Interjection:** Former MPP.

**Mr Hrytsak:** He was also a former MPP, absolutely. He's a man of integrity, and he cannot stand the reforming of this particular act in Ontario.

It says:

"Whereas the Ontario government has introduced Bill 99, legislation which completely rewrites the Workers' Compensation Act; and

"Whereas Bill 99 limits or outlaws compensation for certain disabilities compensated under the current act; and

"Whereas traditional sickness and accident insurance programs view these disabilities as work related and are not likely to take responsibility for compensating the disabled worker for them; and

"Whereas our health care system and social assistance programs will be expected to provide care and income for workers whose work-related disabilities are not recognized by the workers' compensation and private insurance system,

"Therefore be it resolved that before any changes to the workers' compensation legislation are enacted the provincial government will commission a comprehensive study to examine the impact on municipal expenditures and guarantee to provide local government with the

necessary funding to cover all expenses which may be downloaded to the municipality.

"Be it further resolved that public hearings on Bill 99 be held throughout the province in order that all of our citizens and organizations who have an interest in these important changes have an opportunity to be heard; and that a copy of this resolution be sent to the Minister of Labour, Elizabeth Witmer."

1600

With that in mind, the Canadian Union of Public Employees here in Sudbury, who are some 5,000-plus members strong, was denied standing at this particular set of hearings, as were many others across this province, and that inequity is totally wrong and it leads this government into discredit.

We brought bulrushes before you this morning and presented them to your Chairman in the hope that you would understand that injured workers and workers of Ontario will rise above this swamp that's being created by the Harris government and by the reforming of Ontario.

I'll start on my brief at this point, having satisfied that the city of Sudbury condemned Bill 99 for what it really is, an attack on workers and a downloading of injured responsibilities from the workplace parties to the private purse of Ontario and their taxpayers.

Bill 99 can only be viewed as the most devastating act to the human soul, a final blow to the character of a worker who's already hurt and demoralized. Briefly, Bill 99 becomes the Workplace Safety and Insurance Board.

For employers it doesn't get much better than this. As a group, Ontario's employers enjoy WCB premiums in the bottom third of North American employers, less than 2% of the payroll; in 1994 rebates paid to employers totalled \$359 million as compared to \$337 million paid to injured workers with temporary disability. Some employers are refunded 80% of their premiums.

The Ontario WCB is one of the top 10 profit-making corporations in Canada. In 1995 the WCB made a profit of \$510 million. The WCB has never borrowed a dime and has over \$8 billion in assets. In 1994 the uncollected employer bad debts were \$173 million. The WCB's unfunded liability is projected to be completely paid off before 2014, without any changes to the Workers' Compensation Act. New claim costs have dropped from \$2 per \$100 payroll in 1993 to \$1.68 in 1995. This is due to a lot of the initiatives that were just started by the NDP government. The WCB's administrative costs have dropped 8.3% in only two years, from 1993 to 1995.

About 6,000 workers die from occupational diseases annually and receive no compensation from the Workers' Compensation Board. Over 8,000 unemployed workers with disabilities receive WCB benefits that are so low they must turn to social assistance to live. The Harris government's Bill 99 will force doctors to provide employers of injured workers with medical information without the workers' proper consent.

The new legislation severely weakens the historic compromise made by workers in 1914 when the right to sue their employer for work-related injuries was given up for a system which compensates workers for injuries suffered because of work. It puts injured workers into frightening situations as their employers force them back to work, and that will be with the help of this bill.

It eliminates independent research on occupational disease. The Occupational Disease Panel, ladies and gentlemen, is a very interesting and integral part of workplace safety. I have a lot of respect for the Occupational Disease Panel and the members who were on there and the research they have done. I was part of a lot of the research that occurred, as I've been part of the protocol set up by the Workers' Compensation Board for industrial disease, particularly in the mining industry.

I'm very well aware that we had one individual sit up here this morning and blame cigarette smoking as the primary cause of lung cancer. I'll have you know that underground we have diesel and we have oil mist. Diesel contains a quotient called benzoate pyrene, the exact quantity in the diesel and the cigarette smoke which was shown by Hope, California researchers as being the primary cause of lung cancer in humans. That explains the excess of cancers in our working population underground.

You've got to look at it this way: If you take a look at the people in the workforce, you have those who have smoked. You'll find that the majority of the lung cancers will occur there, but they're way above the average in the general population. Second, there's a group who don't smoke at all, but those cancers are tremendously advanced. Why? Benzoate pyrene may be one of the answers. Brother Seguin and I both adhere to the chemical soup theory of what we are ingesting underground with the diesel and the oil misting.

What we're really saying to you is, don't be side-tracked in regard to cigarette smoke as being the causal agent only of lung cancer in our workforce, because if you look across the spectrum of our workforce, you'll find that all the cancers are elevated: laryngeal, nasal, prostate, lung, kidney, lymphatic system, brain cancers. All of them are elevated over the general population, yet this government is proposing to outlaw those things. Guess where they'll go? These people have to then go to the public purse for appropriate compensation for an industrial disease that has been shown categorically by the ODP and supported by international research as coming from the workplaces from diesel and oil mist.

The diesel emission evaluation project — I am one of the individuals who is there. I sit there. I'm also the voting member for the Mining Legislative Review Committee, which works with the Mining Act. I'm with the Canadian diesel ad hoc committee; I'm the longest-sitting labour member there. All these things are looking at underground diseases and surface diseases in mills and smelters and we have yet to satisfy ourselves that we only



have a non-industrial cause. We find there is definitely an industrial cause and that our percentages are somewhere between 10% and 20% higher, depending upon category of cancer, related directly to that industry than in the general population.

As I said, the new legislation severely weakens the historic compromise made by workers in 1914, when the right to sue their employers for workplace injuries was given up for a system which compensates workers for injuries suffered because of work. It puts injured workers into frightening situations, as their employers force them back to work; eliminates the independent research on occupational disease; cuts indexing by 75% for most unemployed workers with disabilities; outlaws compensation for workplace stress and kills the right to an independent appeal about WCB decisions.

The costs of WCB claims that are no longer recognized by the board will be transferred to the social services and health care systems, offloading the employers' responsibility to the taxpayer. This government has reformed those particular sets of safety nets for people in this province and they've reformed them to the point where there's no longer a recognizable safety net in Ontario. In fact, it's more like a web of holes which everyone who has a need is encouraged to fall through.

Quite simply, Bill 99 is a facilitation. No wonder it's supported by the Ontario Mining Association, as it's a facilitation for them to shed their financial responsibility for the damage they are doing to workers. In fact, we, through the Auto Workers, for the first time in a collective agreement have oil mists within the automotive section. We're attempting to do the same with Falconbridge Ltd. They've told us to stick it. Why? Because they know the bill is theirs. They won't even give us cancer insurance, for Pete's sake. They want to shirk their responsibilities that bad. It gets to the point where it's ludicrous.

You can't keep hiding the facts under a false premise of getting rid of the ODP, getting rid of the things that are real. Don't keep on nailing people because they like to barbecue. By the way, up here, up north, you can only barbecue a couple of months of the year; otherwise, the black flies get you, the mosquitoes get you or you get frostbite. Then again, frostbite is compensable if it's on the job, but maybe you did it while you were barbecuing; I don't know. That's the convoluted logic that we're up against.

Quite simply, what we're trying to say to you is, don't allow this type of legislation in Bill 99 to go forward in its present form. We need vocational rehabilitation in the worst way. We don't need to farm it out or contract it out. They've already done that to Rx Plus. Our understanding is that the Aetna group, which is an insurance company in Toronto now training the WCB people — we understand Liberty Mutual is poised to take over the whole system as a privatized set of circumstances. Yes, I know, you're saying, "Where in the hell is he getting that

crap?" Simple. We're getting it right out of your offices, so we know that.

1610

**Mr Hastings:** That's your imagination.

**Mr Hrytsak:** My imagination? I can tell you about imagination, my friend. The people who wrote 99 have one tremendously great imagination.

I don't think it's necessary for me to pound on this piece of legislation except to say that I am disappointed with the Ontario Mining Association's position. We thought Patrick Reid finally had his shot at labour when he used a documentary in regard to a lung cancer victim who has now passed away. When we accused the Ontario Mining Association — I shouldn't say "accused." We just kind of pointed out that their whole situation is a black bottom line and that everything they do is in regard to a dollar. I understand he used that particular documentary as reason to ask for the privatization of TVOntario, and if that be the case, then that's just another excuse for the Ontario Mining Association to dig its heels in and help to reform Ontario along with this government.

But one thing I heard from the Ontario Mining Association that they enjoyed David Muir. Dr David Muir wrote the Muir-Julian report along with Dr Julian. Dr Muir is now retiring. In fact, he has cancelled his contract with Inco and has decided no longer to work for them and that contract will be relet to another individual.

Quite clearly, if you're saying that the Julian-Muir report is biased and that Inco is saying it's biased, it was written by the person they hired. I find it very difficult to absorb that this is such a terrible report when it's Inco's money, in the majority, that paid for it, because they hired Muir to look after the Ontario miners' file for over 20 years.

Quite simply, ladies and gentlemen, the convoluted logic that came out here from the Ontario Mining Association simply can't hold water. If you buy that, I then know why you're buying it: because it helps to win campaigns. I thank you very much. That's my presentation on behalf of Mine Mill and Canadian Auto Workers Local 598.

**The Vice-Chair (Mr Jerry J. Ouellette):** I'm afraid we only have enough time for one question — we have about a minute and a half left — and it's the government members' turn.

**Mr O'Toole:** Thank you very much, Mr Hrytsak. I just want to clarify for the record: I'm clear in understanding that you are with the CAW, not the UAW. I made that mistake when I was in Toronto and out of respect I clarify the record.

Just one question: You mentioned at the very beginning, in the preamble, that the presentation made by the CAW in Toronto covered all the germane points.

**Mr Hrytsak:** Yes.

**Mr O'Toole:** You have included for us a copy of that with your presentation.

**Mr Hrytsak:** That's correct, and I apologize for page 8. It got scrambled in our machine, I noticed after.

**Mr O'Toole:** That's good, but the main points of the CAW have been made and established.

**Mr Hrytsak:** That's correct.

**Mr O'Toole:** And very well put in that report. What was the position of the CAW in the public hearings on Bill 165? They were in 1994. I'm not sure if you took part in those.

**Mr Hrytsak:** Yes, I did.

**Mr O'Toole:** What was the position of the CAW when they were looking at significant changes to the Friedland formula and other aspects? At that time, needing and recognizing that reform was required, what was your position at that time?

**Mr Hrytsak:** The position of the Canadian Auto Workers at that time and the position of the Sudbury Mine, Mill and Smelter Workers Local 598 was the same. We decried the Friedland formula changes and the reduction in benefits to workers. We still say that is take-away, we still say that is wrong and we still say that it should not be there, that you cannot finance industry, you cannot finance anyone on the back of injured workers by reducing their benefits, by having a cap at some fictitious level.

**Mr O'Toole:** There was some \$13 million to \$30 million being removed from the entitlements, if you will, by the previous government.

**Mr Hrytsak:** That's correct and our understanding is that went to employers in rebates through NEER and CAD-7.

**The Vice-Chair:** Thank you very much for your presentation.

We call our next group to the table, the Sudbury and District Hotel and Motel Association. Are there any representatives from the Sudbury and District Hotel and Motel Association here?

#### NORTHEASTERN ONTARIO BUILDING AND CONSTRUCTION TRADES COUNCIL

**The Vice-Chair:** We'll move on to the next presenter, the Northeastern Ontario Building and Construction Trades Council. Thank you very much, Mr Holder. I believe you know you have 20 minutes to use as you see fit.

**Mr Andy Holder:** I won't take that much time. As you know, I represent the northeastern Ontario building trades. We are a branch of the umbrella of the provincial building trades. The provincial building trades have already made quite a lengthy presentation to the standing committee. I would just like to touch on a couple of subjects that we in Sudbury believe affect us.

We're made up of a number of building trades, 14 to be exact. Construction is a unique part of labour, part and parcel with all the other different parts of labour that make it up. Each has some critical subjects to bring up.

Construction is characterized by short-term employment — even at the best of times — heavy physical labour, temporary job sites and numerous small employers. Unfortunately, these key aspects which make construction unique have been virtually ignored in terms of workers' compensation legislation. It is our hope that these oversights of the past will not continue with the present provincial government.

There are a number of key aspects of Bill 99 which adversely affect the construction industry. I'd just like to highlight a couple today.

One of the great concerns facing injured workers in the construction industry is the issue surrounding the establishment of average earnings. Section 53 of Bill 99 has the potential to severely restrict fair compensation being paid to an injured construction worker. Given the cyclical nature of construction, it is our contention that the hourly wage rate be used when determining the average earnings for injured construction workers.

One problem with the wording of section 53(1) is that a construction worker may have many different employers during the course of a year. Even though a person may have had steady employment, if he or she were to become injured shortly after changing employers, the employer may make the case that the injured worker's average earnings should be based on what he or she earned with the current employer. Obviously this is not fair and the legislation should be rewritten to reflect this. This exact problem was evident in the prior act, in clause 40(1)(b).

I would like to expand on how this section, in conjunction with actions being taken by the federal government, could have serious long-term implications for the construction industry. As stated previously, much of the work in the construction industry is cyclical in nature. Changes to the employment insurance system have increased the financial risk of becoming a construction worker. One no longer is covered by EI for the first two weeks of the school portion of one's apprenticeship. It takes longer to qualify for greatly reduced benefits. Frequent users are penalized and the clawback penalties are severe. So now we have a situation where if you are healthy, your annual income as a construction worker will suffer, and if you get hurt, you aren't likely to get much in the way of workers' compensation benefits.

We are in the just-in-time business of delivering highly skilled tradespersons on an as-needed basis. If we can't attract sufficient numbers of good people to the trades, the economy of Ontario will suffer. I bring your attention to the attached graph, which indicates reasons for leaving the construction industry. The number one reason for leaving the industry is job security. Certainly the factors which I have just mentioned will not only cause a greater increase in people leaving the industry but will make it much more difficult to attract new people. We would ask the committee to seriously consider this section on Bill 99 during their deliberations.



Return to work: Most construction workers are denied return-to-work rights as a result of the thresholds which have been placed on this principle. Bill 99 continues this unfair pattern of discrimination in subsections 41(1) and 41(2). The construction industry is characterized by numerous small employers. The average construction company employs five to 10 persons. As a result, very few construction employers meet the 20-employee threshold. Further, construction workers, as the nature of the industry dictates, are highly mobile and work for different employers in a year.

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Thus, most construction workers do not qualify for return to work. Both the Provincial Building and Construction Trades Council of Ontario and COCA, the Council of Ontario Construction Associations, representing employers, agree the thresholds should not apply to the construction industry. We recommend that subsection 41(8) be amended to read: "Employers engaged primarily in construction shall comply with such requirements as may be prescribed concerning the re-employment of workers who perform construction work. Subsections (1), (2), (4) to (7) do not apply with respect to those workers."

On a more positive note, Bill 99 does acknowledge the uniqueness of the construction industry in subsection 40(3). In discussions with COCA, the Provincial Building and Construction Trades Council of Ontario agrees that the Minister of Labour should form a committee with the chairperson from the Workers' Compensation Board to write the regulations required for this section of the act.

As you have heard from the Provincial Building and Construction Trades Council of Ontario in their brief to you last month, there are a number of serious issues which need to be addressed for the construction industry. I have only tried to explain two of these to you today, and I thank you for the opportunity to speak to you and welcome any questions you have.

I'd also like you to keep in mind that you have probably heard the following message quite repeatedly. It's a very important one for all members now more than ever. We should reflect upon the underlying principles which have led to the concept of workers' compensation: (1) Workers must be compensated for lost earnings as a result of work-related injuries and diseases; (2) workers would relinquish the right to sue for workplace injuries if employers would fund a no-fault compensation system; and (3) funding should be on a collective liability basis to protect small employers from the ruinous costs of an anomalous, single serious accident. It is important to keep these underlying principles in mind in view of the worker's compensation system in this province.

**The Vice-Chair:** Thank you, Mr Holder. You've left approximately four minutes per caucus. We begin with the official opposition.

**Mr Patten:** You were saying that the chief reason for people leaving the construction industry was because of job security. What is the turnover? Do you have any stats on the turnover in the industry?

**Mr Holder:** No, I don't have the stats for that. Those I could probably get.

**Mr Patten:** What would be your prevailing view? Is it high?

**Mr Holder:** It's high. The construction industry, like we said, is cyclical and it's adaptability to the economy is more harsh than other ones. It may be the last part of the economy to finally pick up, but it'll be the first part of the economy to be destructed as construction and economics cease. So when you have problems with compensation — and these are only problems with compensation with the act. There are far more problems with compensation in the running of the system itself, which is far more traumatic on some of the members who are injured. But this, combined with unemployment insurance — federal legislation — makes construction not what it used to be and it makes it less attractive to people to participate in, and therefore creates an older, aging construction force in Ontario.

**Mr Patten:** You have also said in your paper here that, "The construction industry is characterized by" — I think we all know that — "numerous small employers" and being less than the threshold. Would you suggest any threshold? Even if someone had a partner and there were two employees, would that still apply, or do you think there should be some threshold and it should just be dropped?

**Mr Holder:** I think it should be dropped.

**Mr Patten:** To what level?

**Mr Holder:** Based on the perception of what the construction industry is. You may have a contractor that's from southern Ontario who's working up here, the person's on a three- or four-week job, the man gets injured, the job is finished, the contractor is no longer a resident employer of northern Ontario and therefore it would deem it uneconomical for this person to rehire this person down in southern Ontario where he would be of no use to them.

**Mr Patten:** Is there any magic about 20 employees or is that an arbitrary number when that was —

**Mr Holder:** I believe that's a number that's there now as a number. Not being an expert on the compensation act —

**Mr Patten:** Me neither.

**Mr Holder:** — as the building trades would see it with their constructors, that seems to be a number that is not a fit right now.

**Mr Laughren:** If you could help me out here, on the first page of your brief you talk about — I understand part of it — how an injured worker could have worked steadily all year, maybe for four, five or six employers, and then, when he gets hurt, you say that the employer could "make the case that the injured worker's average

earnings should be based on what he/she earned with the current employer." Who has the say in that? Can the employer just say that or does the board make a determination that it's an average over a certain period of time? Do you know?

**Mr Holder:** I don't exactly know how it's put together, but based on some of the ones that I've dealt with, some of my members, the person, as he works — he may have worked steadily, but the company he was injured for is the one they're going to base his most recent earnings on and then protract it over. Sometimes it works to their better where they'll go back a lot further to base —

**Mr Laughren:** Yes, it could work out that the last employer he earned the most money at too, couldn't it?

**Mr Holder:** It's highly unlikely if he had been working for a year, but the point is raised that he could have made a considerable amount of money, if he was on a shutdown or something, and worked seven days a week, 12 hours a day.

**Mr Laughren:** I think this does point out the uniqueness of the construction industry and the need to deal with it separately, because most of us are not experts in understanding all of the differences with construction.

**Mr Holder:** The hardest part is if you can get away from the fact of considering that construction work is a full-time job, 52 weeks a year. Once you get into that mindset and realize that these are tradespeople who are working in the construction industry who can only work when the economy is booming for new construction; otherwise they're repairing or replacing, things like this. These people work for long lengths of time at certain companies. But they may work for 20 different employers in a year. It's very hard to take that mindset and put it into where you're working with the same employer all your life. They work in different plants. They work in different conditions. They could work at Inco and then they could work at Kidd Creek, they could work in an automotive plant, then work in a nuclear facility, and then be working in an oil refinery. They're very highly skilled and mobile and used for construction purposes. So when calculating their average benefits, it's quite an exact —

**Mr Laughren:** The only other point is to commend you for reminding us again of those five underlying principles of the compensation system, because I don't think we hear them enough.

**Mr Holder:** No, in the provincial building trades' presentation they expound more on some of them, but those are the things that we must keep in mind as to why the compensation was set up in the first place.

**Mr Maves:** I know the minister understands that there's a meeting of the minds between the provincial trades councils and COCA. I think that is the intention of subsection 40(3), to discuss those things with both and try to get an agreement with both that is acceptable to each. I've had a supplementary meeting with gentlemen

from the Sheet Metal Workers' Union, and subsection 41(8) is something we're also considering. I wanted to let you know that we understand the difference with the construction industry and other industries and we're taking that under consideration and talking with COCA and the provincial trades council about that.

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**Mr Hastings:** A good presentation, Mr Holder. My question relates to return to work, which is pretty limited and modest, given the nature of the construction industry. Some people from the Sudbury Construction Association this morning suggested that — I guess this will come about through COCA, perhaps — when an injured worker gets the costs allocated for his or her accident to that particular accident employer, the costs are extremely high. Not only that; under the present arrangement it would appear as if the return-to-work provisions under the old act or even in this new approach would be limited to trying to get that particular worker back in that company, ie, the accident employer. The rep from the construction association suggested that there needs to be a more financially pooled, multipronged approach to getting those folks back to work because of all the fragmentation, the small number of companies etc. There sometimes is the odd bigger player.

What would your reaction be to his or her — I think it was a gentleman — his thinking that you look at a pooled approach and a multiapproach from all the employers for those folks who are injured on the job for getting them back to work, rather than the more traditional approach we have in other industries, particularly the service sector?

**Mr Holder:** Again, because of the uniqueness of construction, that would probably be a more logical way to do things than to have a person who's working with a contractor or an employer who is no longer even part of the area — some of them are transient employers and are based in southern Ontario. They're here for a short time, do a short job, and if somebody happens to get hurt, how would they employ that person in another region of Ontario? Basically, to put him to work down there, there would be a lot more financial obligations like subsistence allowance and living away from home and things like this. Realistically, that's not the proper way to do it. There has to be a different approach.

I'm sure the door wouldn't be closed on any pronged approach where there's a pool to help the person get back. Anybody thinking that a person would rather be on compensable insurance than back earning a regular wage, I think that has to be cast down. It's hard enough getting by nowadays on a regular wage without trying to get by on a reduced wage or a severely reduced wage, because there's a lot more involved in a person's life than just his return to work to earn a living. They do have a family and these kinds of things. I think any new approach would be realistically looked at and viewed as important.



**The Vice-Chair:** Thank you very much for your presentation.

PETER HUDYMAN

**The Vice-Chair:** We have another presenter coming forward, Mr Peter Hudyman, or is it Anderson? Sorry. It's just that we have two different spellings here. If you could just say your name for Hansard, please.

**Mr Peter Hudyman:** For the record, my name is Peter Hudyman. You'll have to excuse me; I haven't had much sleep. A friend of mine broke his foot last night, just to let you know I'm going to be a little tired.

**Interjection:** Compensable?

**Mr Hudyman:** He's actually an injured worker himself. He injured his back, but I won't go into it. I'd just like to say hello, greetings.

Just to let you know where I'm coming from, I'm an injured worker. I was diagnosed with carpal tunnel in 1994 from construction work, so I can understand what Mr Holder from the building trades council was talking about, about how they devalue your income. My TT rate was decided by averaging out three employers working only three and a half months of the year. I know exactly what he's talking about. I know the section of the act they use to define that and to limit your income to where you are, so I'm living on a relatively meagre WCB income and have yet to have voc rehab.

I have also, having been trained through the OFL to do representation, represented workers at WCB, I've represented workers at UI, at CPP and disability, just to let you know I've done that and I'm familiar with the act and I've been before hearing panels too. I'd be willing to speak on any issue with respect to the act, but I'll get into that at the end of my presentation.

One thing I want to say at the beginning is that I was pretty appalled to see that labour, the people who are the real stakeholders here in terms of workplace safety and in terms of compensation, weren't part of any drafting, any reconsideration of the act. They weren't there. Injured workers weren't at the table. Labour wasn't really at the table. This whole bill was drafted with an employer agenda and with an employer board. That's appalling. The people who experience the health and safety, the ones who get hurt on the job, are not even at the table discussing this question, so from the beginning you're getting a biased approach. I wanted to make that point.

If you truly wanted to promote workplace health and safety — I've invoked health and safety act protection on right to refuse numerous times, and been fired for it. There is no need to replace or rewrite the Occupational Health and Safety Act. The act itself is pretty good. All you need to do is enforce it, at a time when over the last several years we've seen the Ministry of Labour lay off inspector after inspector, not do the inspections and let employers get away with violation after violation of the act. It's amazing. There's no reason to rewrite the act; there's no reason to water down the right to refuse unsafe

work provisions, to make it — what is the wording they use again? — imminent danger; that's the wording. Only when the steel is right over your head, then you can refuse work, and two seconds later you're dead. It's ridiculous. There's no reason to rewrite it; just enforce the act.

I can't even understand the rationale for eliminating the Occupational Disease Panel. Why would anybody do that? This helps everybody understand how people get diseases from an innocent standpoint. You can find out whether or not it's work-related from the research the panel has done over the years.

Labour market re-entry — I'm going to talk about a specific section of your proposed Bill 99. I can already see the general trend in representing workers. Let me describe one scenario I have going on at this point with one particular worker. One medical opinion in this worker's case says that this worker can return to work and do modified work. The employer goes to an employer-biased server who does FAE assessments and gets another opinion that says: "Oh yes, we've assessed this person. This person can do the job." I don't have the name of the FAE assessor. They're already known in town, actually; they've come out in the press. Rehab works. They've said, "Our whole goal is to reduce costs for employers." Where's the consideration of the workers' compensation or any kind of objective ability to assess the worker at that point? That's amazing.

We're given those two opinions, so one opinion says this worker can't do anything, that her back is gone; she can't lift, she can't push. The other medical opinion, which is of dubious character, says she can. So where does the WCB fall at that point? The adjudicator or the case worker says, "I'm going to fall on the side of the dubious-character, questionable one and say okay, you can go back to work." The worker tries it and fails. She can't handle it. So what happens there? That's where I see your labour market re-entry, section 42, going. It's going to get worse, and workers are going to be in danger. Workers are going to have no choice but to either invoke the right to refuse unsafe work at that point or injure themselves far worse. It's amazing. It boggles the mind; it really does.

I can't think of more of a joke of a term than "labour market re-entry." That's a joke of a term. It's more like "injure-your-back re-entry."

Tightening up qualifications, which is generally what this act is doing, reducing benefits, de-indexing benefits and all of the other proposed changes, will do nothing more than create more poverty among injured workers. We have already lost 30% of our gross income. We're down to net now. We've lost that gross income. We have no way to get that back, aside from construction workers like me who are at the bottom end of the pecking order that Mr Holder was talking about earlier. This is unbelievable.

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But we've got to take more cuts. We've got to be de-indexed to put more money back in the pockets of employers. Employers have abrogated their responsibility to clean up their workplaces. It is readily apparent now that they want to discard their responsibility to provide decent compensation to workers. It boggles the mind. If they took care of their workplaces, and I've been there — employers will intimidate workers not to file claims, will sit there in the trailer shack, "We'll pay you for a week; don't worry about it; don't file a claim." Next week they're down the road. No claim; they're on the street. Even if they raise an objection to refuse unsafe work, they are made a pariah throughout the industry.

This government has more than demonstrated with this proposed draconian legislation that workers are nothing more than commodities to be discarded once damaged or worked almost to death. We've got half the country working to death on overtime at Falconbridge, at Inco; we've got the other half on waivers. It's a ridiculous agenda. This legislation is an insult to every worker in this province. Those who produce the wealth in this province deserve first consideration when they are injured, not be the last to receive consideration.

I urge you in the most strong terms to scrap this bill in its entirety because: (1) accidents and deaths will rise as fiscal responsibility takes precedence over real health and safety; (2) workers will become impoverished. You will see workers fall between the cracks. You will see them on welfare. They will fall to social agencies and be forced to sell their homes, it'll be amazing, just because they got injured through no fault of their own on the job, working for a living. It's utterly insane.

If you pass this bill in its present form, I'm telling you you'll have blood on your hands. I thank you for my ability to present to you today.

**The Vice-Chair:** Thank you very much for your presentation. That leaves us just over four minutes per caucus, and we begin with the NDP.

**Mr Christopherson:** Thank you for your presentation. A couple of thoughts on your presentation, one around the ODP, and I'd appreciate your response to this: It's interesting that the government says that the reason — I've watched the reaction of some of the government backbenchers on this committee when people come forward and talk about the damage this government is doing to the ODP by killing its independence and folding it back into WCB. They sort of recoil as if that's some kind of horrific lie that all the people who say that are conspiring to spread around.

It's interesting that if the government really believed they want to make it better, which is what they say, and the parliamentary assistant will brag about how they're going to put new money into it and, "We're going to make it better, better, better," politically one has trouble understanding why, if they want to do something that would make injured workers happy and they want to do

the right thing, they both converge at the point where they leave the ODP in place as it is. I just fail to understand where the political logic is, where the worker-concern logic is; it just completely escapes me. The only thing left is the fact that it's just another one of the big lies.

It is like the way they're changing the names of things when they say they're improving the environmental protections of the province and the reality is that they're stripping them—

*Interjection.*

**Mr Christopherson:** See? They still react the same way. The only conclusion I can come up with is that some of them have bought in. That's the interesting fact, that some of them believe this garbage and they've bought into the big lie. They actually go home at night believing they're going to make the workplace safer for injured workers, that all of this really is about that. However, I suspect there are enough bright lights in their cus, one would assume, who know bloody well what's going on. Some of them are even ashamed of it but they don't say so publicly.

**Mr Laughren:** Name names.

**Mr Christopherson:** My colleague from Nickel Belt wants me to name names.

**Mr Laughren:** The bright lights thing.

**Mr Christopherson:** Oh, the bright lights thing. Because you have so much trouble believing they're there?

The other thing is unrelated to what you spoke to, but I wanted to get your reaction. I wanted to raise it at least once in each community, and that is the issue that injured workers will no longer have control over their own medical information. You've probably seen the form. The government says it's innocuous, that it only talks about functional performance and things like that, yet you and I know the kind of reaction ordinary people have to giving away the privacy of their medical information. So just on those two topics, some of your thoughts, please.

**Mr Hudyman:** Sure. I remember seeing claims where workers worked 20 years doing heavy work with their hands and got carpal tunnel and the board said, "Oh, it's because you had a pregnancy," but the pregnancy was over a year ago. It's ridiculous. The reason they want access to that is to say, "The reason why you injured your back wasn't because you were lifting 200 pounds of steel; it's because you're getting older and your bones are becoming whatever." It's utterly ridiculous.

I've had appeals particularly on this question that prove it, but I know with these proposed changes it's going to get far worse, with an employer-dominated board sitting there deciding the utterly ambiguous sections of this act that could be interpreted either way by an employer-dominated panel. There are so many ambiguous sections here, and which way it's going to go in terms of interpretation is going to be up to a bunch of people who are not workers, who are not the people who



have actually suffered. It doesn't have any labour representation or injured worker representation. It's mind-boggling. There's no fairness.

**Mr Laughren:** Peter, welcome to the committee. You indicated at the end of your presentation, I think, that you were concerned there would be violence if this bill is passed in its present form. Do you think we're going back to the old days, when there was violence? Is that what you are finding?

**Mr Hudyman:** Yes. It's obviously part of the agenda to level the playing field in terms of removing any kinds of impediments. It will be like the turn of the century. We're talking about going back to the 1900s, where if a worker lost an arm or a leg he would starve, and it was left to his co-workers and his community to keep the family alive. We're talking about a time when there was no compensation. It's unbelievable.

**Mr Maves:** I just wanted to make a comment about inspections to correct the record. In actual fact we've filled 20 inspector positions that had gone unfilled by the previous government and we're hiring 20 more. Inspections are up 46%; total field visits are up 31%; the number of orders has increased again 46%; and 128 convictions were obtained, resulting in total fines of \$2.3 million, which is a 44% increase. I just wanted to put your mind at ease about inspections and inspectors. Both are increasing under this government and the facts are there and on the record.

**Mr Hudyman:** Until just a few years ago I was in the workplace, and when you did see an inspector it was a rare moment. When he was there he was listening to the supervisors and not even talking to the workers. If you want to talk about quality of inspection, that's entirely another issue. These inspectors, in terms of whom you're hiring, are by and large supervisors. There are really no workers who have come from the rank and file, who understand working issues or even consider the workers. They come with a biased agenda because they came from supervision. They came from the company side.

**Mr Maves:** Actually, I hear the exact opposite, obviously from the other side.

**Mr Hudyman:** I know from experience and I know at least from the Sudbury office of the Ministry of Labour that they're just not there. There are no real worker inspectors who come from the rank and file there. I've got stats at home — I didn't bring them; they're a few years old — that show how inspections have radically declined.

**Mr Maves:** If they were so biased in favour of the employer, though, why would orders be so far up and convictions be so far up?

**Mr Hudyman:** Orders against workers have been up.

**Mr Maves:** No, employers.

**Mr Hudyman:** Orders against employers have been down. I'm sorry, I've seen those stats and I can fax them to you if you give me your fax number. I've got them.

**Mr Maves:** I've got them too. Thank you.

**Mr O'Toole:** Thank you very much for your presentation. I don't want you to go away with the impression that someone here at this table, on either side, wouldn't have the greatest sympathy for an injured worker.

**Mr Hudyman:** You're certainly not showing it in terms of this proposed legislation.

**Mr O'Toole:** It's about improving a system that has been recognized since about 1980 to be in need of reform. Each of the last three governments has tried to reform it. Are you aware of that? Are you aware of some of the changes in the previous government's Bill 165? In fact the ODP they talk about — their first draft of the bill was to also be included with the WCB. Do you know that?

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**Mr Hudyman:** I'm fully aware of Bill 165. I'm fully aware of what was in it. I was in the press speaking against that bill at that time too. I was against the cuts in the proposed agenda in that bill and I'm against this one too.

**Mr O'Toole:** Medical opinion conflict is not new, as well. There are already independent medical opinions today of conflict between diagnostics. That's not new and it's not particular to any government. I think it's important that the language be clear and the regulations be clear.

I have one specific question that I might want a response on from you. You mentioned in your thing that Inco and Falconbridge and all the rest are working massive amounts of overtime, yet at the same time I read that there's an unacceptable amount of unemployment in Canada; perhaps it's improving in Ontario. Do unions have a role in this overtime? You mentioned you're with OFL or something.

**Mr Hudyman:** If memory serves me — I've worked with the OFL on questions — if you look at the mine-mill strike right now, they're actually striking over the four-shift schedule, which involves seven days of 12 hour shifts, and that's one of their major issues. They're striking on that issue. They're saying, "The shifts are killing us; they should spread out the work," and they've always taken that stance. It's just a simple fact that the employer regulates the working hours and has sole control over what it's going to do with its workers in terms of scheduling.

**Mr O'Toole:** So four eight-hour shifts, is that the way it is? How many hours a week?

**Mr Hudyman:** The Falconbridge shift, from what I understand, is seven days at 12 hours and they're off for two days and they go back for another —

**Mr O'Toole:** Do you have any recommendations on how to get into work sharing of some sort? You make a point that there's a massive amount of overtime by one group and then high unemployment that's being quoted. You're out there. What do you think should be done? Don't you think both sides should sit down —

**Mr Hudyman:** I think there should be a 32-hour week with no loss in pay. There's no reason why it can't be done.

**Mr O'Toole:** No loss in pay; that means a 30% or 28% increase in pay.

**Mr Hudyman:** Yes. There's no reason it can't happen. They are already making plenty of money as it is.

**Mr O'Toole:** It's a little off topic, but thanks.

**Mr Patten:** Thank you for your presentation, especially seeing that you overextended yourself to join us. An implication of what you said today suggests, and a lot of people have suggested this, that Bill 99 is really employer-biased, that it doesn't have the balance that the government proclaims. It's also been suggested that a number of moves have already been made by Mr O'Keefe prior to the legislation being passed that are totally in sync with direction of Bill 99.

It struck me as kind of odd or symbolic that about six or eight weeks ago the WCB announced they were going to invest \$10 million for investigators to investigate claimants and recipients of various programs. When you looked at the statistics of it they were very tiny indeed, given the hundreds of thousands of workers who are compensated each year, but this was going to be another snitch line, another set of investigations. It seems to me there's an attitude that the workers, the welfare people are all somehow massive abusers of the system. I suppose it's fair to say that in any big system you will get some, but the research suggests that it's pretty minor especially in this particular area.

Then I read, by Gary Hrytsak this afternoon, that in 1994 employers defaulted on \$173 million or \$174 million and I didn't hear any comparable effort. I don't know whether that's high or low; over the years how many defaults there are; how many are concurrent with true out-and-out companies going out of business, but that's a lot of money. That's an incredible amount of money.

**Mr Hudyman:** It amazes me — I get your point exactly and I think the government should too — why you would sit there and penalize them. Why not go after the money that's deferred? In 1994 I remember appearing

on Bill 165 and the amounts — they were in the Toronto Star — were \$200 million and something in unpaid assessments and everything else. As I understand it, employers also get rebates more and more now from WCB. It's incredibly insane to sit there and penalize the lowest guy on the totem pole.

There's corruption within the corporate world. They get tax breaks beyond everything else and every working man's tax dollar goes to — yet they don't pay a cent and they get tax deferrals up the wazoo. It never ceases to amaze me. But of course the guy on the bottom is somehow cheating the system, so we've got to go after him, who's been injured and now is living on a reduced income — it boggles the mind — if he does qualify for a claim.

**Mr Patten:** My final question: Mr Filo mentioned this afternoon that all the appeal mechanisms for workers were shut down and that this was another example of the bias of the legislation. Do you agree with that?

**Mr Hudyman:** Yes. They make an arbitrary decision you have no right to question. You have no avenue to go. The worker is left out of the loop. It's amazing.

**Mr Patten:** It's been suggested by a number of legal clinic representatives that it really will move the bill along the direction of increased litigation that will be more costly for everybody. Would that be your observation as well?

**Mr Hudyman:** Yes. What's going to happen is that in the levelling of the playing field workers are going to have to hire lawyers and consultants up the wazoo just to try and get their claim through. The employers are already doing it on a massive scale and getting consultants to prepare their labour market re-entry programs. It's just going to be insane and they're going to go through a smaller loop.

**The Vice-Chair:** That concludes your presentation. Thank you very much.

**Mr Hudyman:** Thank you for letting me present.

**The Vice-Chair:** That concludes our hearings for today. We reconvene tomorrow at 9 am. Thank you very much.

*The committee adjourned at 1657*





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## **Legislative Assembly of Ontario**

First Session, 36<sup>th</sup> Parliament

## **Assemblée législative de l'Ontario**

Première session, 36<sup>e</sup> législature

# **Official Report of Debates (Hansard)**

Thursday 7 August 1997

# **Journal des débats (Hansard)**

Jeudi 7 août 1997

## **Standing committee on resources development**

Workers' Compensation  
Reform Act, 1996

## **Comité permanent du développement des ressources**

Loi de 1996  
portant réforme de la Loi  
sur les accidents du travail



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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU  
DÉVELOPPEMENT RESSOURCES

Thursday 7 August 1997

Jeudi 7 août 1997

*The committee met at 0902 in the Valhalla Inn, Thunder Bay.*

WORKERS' COMPENSATION  
REFORM ACT, 1996LOI DE 1996  
PORTANT RÉFORME DE LA LOI  
SUR LES ACCIDENTS DU TRAVAIL

Consideration of Bill 99, An Act to secure the financial stability of the compensation system for injured workers, to promote the prevention of injury and disease in Ontario workplaces and to revise the Workers' Compensation Act and make related amendments to other Acts / Projet de loi 99, Loi assurant la stabilité financière du régime d'indemnisation des travailleurs blessés, favorisant la prévention des lésions et des maladies dans les lieux de travail en Ontario et révisant la Loi sur les accidents du travail et apportant des modifications connexes à d'autres lois.

UNITED FOOD AND COMMERCIAL  
WORKERS INTERNATIONAL UNION

**The Chair (Mrs Brenda Elliott):** Good morning, everyone. We welcome our first presenters this morning to the standing committee on resources development. We are very pleased to be here in Thunder Bay and look forward to an interesting day of advice on Bill 99. Please introduce yourselves for Hansard. You have 20 minutes in which to make your presentation; you may or may not allow time for questions.

**Mr Tom Kukovica:** Good morning. My name is Tom Kukovica. I'm the Canadian director of the United Food and Commercial Workers International Union. I have with me Pearl MacKay, who is the executive assistant to the president of UFCWI Local 1000A, and Dave Killham, who is director of education of UFCWI Local 175633.

Members, I'm going to make a presentation, but I'm not going to read the whole brief. I want to point out some of the major issues of our presentation.

Members of the United Food and Commercial Workers International Union work mainly in retail food stores, food processing plants, meat packing, poultry, restaurants, hotels, breweries, nursing homes and school boards. We have 85,000 members who live throughout the province.

Half our members are women and part-time people and immigrants to Canada.

Most of our workplaces are small. Even though we have multinational corporations, workplaces have less than 200 and in most instances less than 20 workers.

Our most common injuries are repetitive strain injuries. Many people ask: "How can you be injured in a grocery store? It's clean, bright and usually air-conditioned." What they do not see is how hard the work is. During an eight-hour shift, between 2,000 and 16,000 pounds of goods pass through each open cashier station. A person decorating cakes in the bakery will make thousands of twists and turns of the trunk, shoulders and wrists, often with a pinch grip at the same time. Our plants, particularly the meat packing and poultry processing plants, are among the most dangerous in Ontario.

Bill 99 will devastate us. We support our sisters and brothers from the Ontario Federation of Labour and other unions who have spoken about the legal implications of Bill 99. However, in our presentation we want to present some of the practical implications and results this legislation will have on our members.

Our presentation is in six points: self-reporting; the exclusion of chronic stress; modified work and reinstatement; health care; the right to appeal; and administrative chaos.

Self-reporting: Under Bill 99, a worker is required to fill out a specific form to initiate workers' compensation. This change opens up the possibility of a whole new level of intimidation of our workers. This problem is compounded by the nature of the injuries our members experience. Repetitive strain injuries emerge gradually over time. Many do not want to ask their employer for something until they can't stand it any longer. Unfortunately, with RSIs, at that point their injury is sometimes too severe to fully heal.

We are concerned that the process of making a claim before the WCB for entitlement for RSIs may go way beyond the six-month time limit envisioned in Bill 99. Our members who have RSIs often have the experience of their doctor saying, "It looks like this or that RSI." It isn't until later that this is confirmed via diagnostic testing. In addition, numerous other members do not make the connection of their work being the cause of the RSI they are experiencing. The six-month time limit for making a claim be-



fore the WCB contradicts the disablement provisions of the act.

Let me talk to you about coverage and the exclusion of chronic stress. A number of our members work in highly stressful workplaces, particularly those who work in nursing homes. In the homes, our members take care of people who are dying slowly, often in pain and confusion. In these workplaces, the patients do not get better; most often, they die in the home. This produces a great deal of chronic emotional and often physical stress.

In the retail environment, some of our members have been stalked by customers and, in some cases, ex-co-workers. These injuries are caused by the work; they should be covered by workers' compensation. It is less frequent that we experience acute stress from a specific psychotraumatic incident. However, it does occur in our members' workplaces when an armed robbery occurs, either at the store or on the way to making a cash deposit, and in incidents of attempts to stop shoplifters. We will be left with no alternative but to sue our employers if these serious work-related conditions are not covered under workers' compensation.

Modified work and reinstatement: As a union, we have worked to establish practical modified work procedures with many of our employers. Much of this is based on the current workers' compensation provisions that require an employer to provide sustainable modified work that has been approved by the worker's treating physician. Under Bill 99, the WCB is given the exclusive right to decide if a modified job is appropriate. Sections 40 and 41 of the bill set out the obligations of both the worker and the employer. The worker gives information to the WCB and the employer. The employer offers the job, and the WCB determines if it is appropriate. The worker's treating physician has been excluded from the process.

We feel very strongly that our members should have the right to decide about their own lives. Moreover, the doctors are the people who actually see our injured workers and know their capabilities. The doctor or health care practitioner should give the authorization for our injured members to return to work, not some faceless bureaucrat who has never examined them. How can anyone who has not seen the worker and who does not actually know the job decide if a worker can do it?

Bill 99 fundamentally changes the nature of health care in the province. Subsections 33(1) and (2) and section 34 of Bill 99 give the WCB the authority to determine an injured worker's medical treatment. This will be the introduction of the idea of managed care in Ontario. Under managed care systems, a bureaucrat who does not know and who has never examined the worker will make decisions about what medical treatment the worker should receive, not the worker's treating health care practitioner. This is intensified because section 34 of the bill also states that a worker's benefits are terminated if the worker refuses to follow the WCB's health care dictates.

## 0910

The United Food and Commercial Workers International Union is the largest private sector union in North America and is an international union with 1.4 million members in Canada and the US. Our union has a great deal of experience with managed care, and our findings regarding the US experience are very frightening. In the US, our experience is that health care managers become gatekeepers, more interested in saving their organization money than in returning a worker to health. It's not a radical observation. In appendices A, B and C of our presentation, you will see three very interesting articles which talk about managed health care and the problems it is generating, the concerns of the public and the legislative initiatives to limit managed care in the US in over 30 states. In Canada our public health system is driven by a desire to provide for the health of our population, not by profits.

Further, we also object to sections 36 and 37, which require both the automatic release of health care records and the automatic obligation that a worker submit to a medical exam requested by the employer. We feel very strongly that our members and all workers must be allowed the dignity of their privacy. We agree that medical information is important to determine how a worker returns to work. However, it's our experience that the present Workers' Compensation legislation and the Ontario Human Rights Code fully protect us right now.

The right to appeal: Bill 99 erodes our democratic right to appeal in at least three ways: by requiring written reasons for an appeal; by limiting the independence of the WCAT and by eliminating effective tripartism; and by introducing time limits on the right to appeal, particularly the 30-day limit for appeals of either return-to-work decisions or LMRPs.

Subsection 114(2) requires a worker to submit written reasons with a notice of objection. This section discriminates against workers who have literacy problems. Remember, UFCW has a lot of immigrant workers in its ranks.

The restriction of the independence of the WCAT and the effective elimination of tripartism also makes a mockery of the idea of an independent review of the decisions of the WCB. How can we trust in the fairness of a final appeal carried out by the same people who made the decision in the first place, particularly if they are bound to uphold WCB policy? Having a worker member on the panel of WCAT would give us greater faith that the panel will listen and understand what happened.

This brings up a number of disturbing changes in how the government is administering the workers' compensation system. This is the introduction of direct political interference in the staffing of both the board of directors of the Workers' Compensation Board and WCAT. For the first time in the province of Ontario, this government has begun to pick and choose who they will allow to be labour's representatives on both the board of directors and on WCAT. UFCW has the distinction of being the only

union in Ontario that has been thrown off both the board of directors of the WCB and WCAT. This disregard for democracy is very disturbing and brings into question the legitimacy of the system.

The last point: administrative chaos. One of the less discussed side-effects of Bill 99 will be the need for front-line adjudicators to adjust to a completely new set of rules brought about by the rewriting of the Workers' Compensation Act. We need to be cognizant that at the same time the WCB itself is being dramatically reorganized. Changing both the act and the board at the same time raises the probability of encountering administrative chaos. This occurred in Nova Scotia when they changed the workers' compensation system and in Ontario with the dismantling of the public administration of the family benefits plan.

In Ontario, close to 500,000 accidents are reported to the WCB each year and need to be processed for entitlement etc. Given these large numbers, we fear administrative chaos will further deter our members from making a claim for benefits once the word is out about further delays. For our members who have private insurance plans, they will be more inclined to make application for benefits under such plans, as opposed to the WCB. This in turn will go further to increase the non-reporting of compensable injuries.

This is but a very brief look at the practical damage Bill 99 will inflict on working people in the province of Ontario, including on our own members. For these reasons and those reviewed by our sisters and brothers from the OFL and other unions, we urge you to reject Bill 99.

Thank you for the opportunity to present our views.

**The Chair:** You've left us with about eight minutes for questions, so that's just over two minutes per caucus. We'll begin with the government caucus this morning.

**Mr John O'Toole (Durham East):** Thank you very much, Tom, for your presentation this morning. You've given us a fairly detailed feeling of what you feel the proposed legislation is all about. I have some reservations with respect to part IV, specifically sections 32, 33, 34, 35. This is the section dealing with health care.

I think, quite bluntly, that much of what you've suggested here is completely misleading. If you were to refer to the current act, and I refer you to section 24 through to section 50, also dealing with health care, you would find that really it's just a repetition. I'm going to specifically read through for the record a couple of parts which — I think it is important for those who may be listening today to understand that the current act does not in any respect diminish the entitlements to health care that an injured worker or any other worker is entitled to. So to read into the record from your presentation I feel is a little bit slanted. Perhaps in your response you could tell me why you've taken some exception with that.

Just for example, I'm looking at subsection 33(6) of the proposed legislation: "No health care practitioner shall request a worker to pay for health care or any related

service provided under the insurance plan." This is pretty clear.

If you go down to subsection 34(2): "If the worker fails to comply with subsection (1), the board may reduce or suspend payments to the worker under the insurance plan while the noncompliance continues." I'd ask you to refer to section 37 of the current act. That's precisely the same language.

So I'm not in disagreement. You've made a good presentation, Tom, but I don't think it's correct to project that the current legislation diminishes the entitlements to health care. I'd like your response to that.

**Mr Kukovica:** I'll ask Pearl to respond, because we're talking about managed care, we're not talking about — it's quite a bit of a difference.

**Ms Pearl MacKay:** In our reading of Bill 99 in its current form, in the section that calls for the board to deem it to be appropriate and sufficient etc and to ask if it's cost-effective, tying in those components, my understanding is that did not exist in the current Workers' Compensation Act. When you tie that in with the removal, or the appearance of the removal of the doctor's recommendations because now the decision is left solely with the compensation board, that leads to no difference than our experience has been within the managed care system within the US.

**Mr O'Toole:** I guess the section we're trying to refer to here is subsection (6) of the current act. I'd refer you to subsection 50(6), which deals with health care in the current act. I'll read it for the record: "All questions as to the necessity, character and sufficiency of any health care furnished or to be furnished and as to payment for health care shall be determined by the board." That's the current act. So there is a managed delivery of the health care service in the current act. I'm not in dispute. I just want you to understand that there is nothing prescriptive or diminishing the entitlements to health care in the proposed legislation.

0920

**The Chair:** Excuse me, we must move now to the Liberal caucus.

**Mr Richard Patten (Ottawa Centre):** Good morning. Thank you for coming and thank you for your presentation. You have put a fair amount of work into this.

I would like to give you a chance, because I know you were rushed in your presentation, to elaborate somewhat on an aspect you identified that I think is absolutely crucial and that I think is different, and that is the right-to-appeal section. It has been identified by a number of people that one of the changes between the existing system and the system we will have is that the independence of appeal mechanisms has gone — that's gone with WCAT — and I might add also, as I'm sure you're aware, the independence of the Occupational Disease Panel, which is fundamentally important to workplace health. So if you would like to elaborate on any section of that, then I would like to provide that opportunity for you.



**Ms MacKay:** Attached to the right of appeal is also some of the stuff we're now concerned we're going to be seeing, with the government selecting who will or will not go forward as representatives of labour. When recommendations have been passed, for example, for a recent round of reappointments at the WCAT there was at least one labour representative who was approved by the Minister of Labour's office and subsequently denied when it went to either the Premier's office or cabinet. This particular member, the labour side's person — Sarah Shartal is her name — was quite an advocate and still is quite an advocate for injured workers and she did her job in that vein at the WCAT. Certainly the OFL supported her in her reappointment, and the government saw fit not to do that.

Our concern with that is that it creates a chill effect, for example, at the WCAT. If people are going to truly do their job, then they need to be free to do their job. This has clearly sent a message to the other WCAT people that if they do their job in a manner they see as appropriate, that may not be in line with the government's agenda, then they are not going to get reappointed.

In terms of the appeal process, that's a little bit more of an extrapolation beyond the specific section.

In particular as well, for appeals where workers must now give written reasons for their appeal, that in and of itself will cause an awful lot of workers to not do an appeal.

There are a lot of workers in this province who do not have representatives to go to for WCB appeal assistance. Even within our own membership, some of our smaller locals don't have the expertise to deal with workers' compensation appeals. It's quite a bureaucratic process. The larger locals within the UFCW are fine, because we have people who work within the local who can do those appeals on our members' behalf. We have three large locals within Ontario and about 65 small locals, so you can imagine who is going to get the representation. Our members within our larger locals will, but certainly in the smaller locals a lot of the members will be frustrated from filing an appeal.

If they're fortunate enough to have sick benefits, weekly I or LTD benefit plans, instead of doing a written appeal with the Workers' Compensation Board, they will have their doctor complete sick benefit forms and will make applications under those insurance programs.

**Mr Patten:** Which may be what the government wants.

**Mr David Christopherson (Hamilton Centre):** Thanks Tom, Pearl and Dave. We appreciate your presentation.

I want to return to the issue raised by the government members in terms of managed care and I want to say very directly to the government that the people who are here today don't feel you have any more credibility on health care than you do on the rights of injured workers. I think the delegation here has every right to question where you're going in terms of managed care and what this

means for people, especially when we look at your privatization agenda. This whole bill, Bill 99, is about taking away the rights that injured workers have. You can slice it any way you want; that's the reality.

I would like to give Pearl and Tom and Dave another opportunity to talk about the experience in the States. I had a chance to glance at some of these articles and it's quite frightening what the whole concept of managed care might mean, and I'd like you to maybe expand on what you think could be the scenario we're facing here in Ontario.

**Ms MacKay:** I'd also like to point out that in our reading of Bill 99, in my understanding, subsection 33(2) of Bill 99 — and I'll read it: "The board may provide a special surgical operation or special medical treatment for a worker if, in the opinion of the board, doing so is the only means of avoiding substantial payments under the insurance plan. The cost of the operation or treatment may be paid from the insurance fund or by the schedule 2 employer, as is appropriate." For us, that is managed care.

In terms of the articles at the back, I actually have another one that unfortunately, when we produced the document, we didn't get to submit, but I do have a few extra copies with me. It's from the Wall Street Journal dated Friday, May 30, 1997, and it's a story regarding a fellow named Marc Gardner who headed up three different HMOs working for Columbia in the US. In this article he talks about the different things he was required and requested and actually agreed to do. Part of his statement is that he agrees that he committed felonies every day, and that's a quote from him.

This is the opposite side of where it would be in some ways in terms of Bill 99, but I think it's important, if you're going to operate a health care facility, that lead directors within those health care facilities will feel obligated in some way to do it the quickest, cheapest way, and they will buy into doing it that way for fear of the compensation board, for example, not having been listed as a potential delivery organization.

In appendix A there is an article from the New York Times —

**The Chair:** Excuse me. I'm sorry to interrupt. Can you just wrap it up.

**Ms MacKay:** In the New York Times there's an excellent article that talks about some of the specifics that have happened. I draw your attention in particular to appendix B, which is excellent. It's from the Senate and it talks about a doctor who is in the Senate and about some of the problems they're experiencing with the HMO process within the US. It is our submission that this is the introduction of managed care in Ontario via the workers' compensation system. Thank you.

**The Chair:** Thank you very much for taking the time to bring this presentation before us. I'm sure we'll look forward to reading the appendix in detail.

**Mr O'Toole:** I would like to put on the record for clarification that subsection 33(2), which was quoted by

the presenters, I'm sure in good faith, is in fact — I would ask you when you leave here to read the current section 24. The language that you referred to is almost identical. I'm not trying to be belligerent with you. You're trying to imply that there's a managed health care evolution —

**The Chair:** Mr O'Toole, sorry.

**Mr Christopherson:** Are you going to give her a chance to respond?

**The Chair:** No, time's up. We're going to move on to our next presenter.

#### COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA, LOCAL 39

**The Chair:** With thanks, I'd like to now call representatives from the CEP, Local 39 Good morning and welcome. You have 20 minutes to make your presentation. You can do as a full presentation or you may allow time for questions.

**Mr Geoff Turner:** My name is Geoff Turner of Local 39 of the Communications, Energy and Paperworkers Union of Canada. I'm pleased to have the opportunity to speak with you today on behalf of my 50,000 brothers and sisters in Ontario. There will be two issues that I will be addressing today.

In our workplace we have approximately 1,700 employees and we have injuries primarily involving knees, legs, backs and carpal tunnel. We have negotiated a modified work program with the employer and through it all our injured co-workers have maintained their employment. This program has successfully maintained employment for all injured workers so far and all of them have returned to their regular jobs within six to eight weeks. So far we've not had to deal with a situation where a permanent injury prevents an eventual return to the old job. Our contract does provide employment for these people as well.

We are aware that some employers have return-to-work programs which are really nothing more than a means of getting rebates from the board. It must be emphasized that a successful program is dependent on excellent training for participants and a strong local union involvement to ensure that it is not a walking-wounded scheme and that it is entirely suitable for the injured worker.

0930

This is exactly what will happen with the proposed legislation in Bill 99. Workers could be subject to harassment to return to work by their employer. It has been proven that all parties benefit when injured workers return to the workplace through a successful return-to-work program.

It is also important that the WCB be kept fully informed of the worker's situation. The WCB must follow up with the worker to ensure the suitability of the work. It must continue to receive medical updates and ultimately it must evaluate any permanent impairment. Care must be taken not to lose the worker's rights in regard to the WCB

through the return-to-work program which emphasizes the ongoing relationship to his job.

The successful return-to-work program requires such specialized training and such a lot of work that it necessitates its own workplace committee. We believe it should not be added on to the already heavy workload of the health and safety committee.

I would like to take a few minutes to talk about health and safety. We also have a successful health and safety committee and we can boast that we have one of the safest mills in Canada. We have been successful in our workplace, but as you have no doubt heard from other presenters, the situation in the province as a whole is unsuccessful. Statistics from the Ministry of Labour show that the number of serious injuries and fatalities has dramatically risen over the past few years. It is unconscionable that employers are complaining about the costs of workers' compensation when so little regard is had for protecting workers from injury and disease.

In concluding on the issue of return to work, we strongly urge you to change your direction in Bill 99. We ask that you review the success stories, such as the ones that have come about at our workplace.

The other area I'd like to speak on is privatization. Privatization of long-held government services and enterprises is currently popular with some governments in this country as they seek both a guide to reduction of debt and to appease the growing appetite of private industry to expand into these previously protected areas. It is now put forward as a serious proposal by business groups in Ontario as a solution to their concern over the costs of our workers' compensation program.

At least one major American company, Liberty Mutual, known here as Liberty International Canada, has positioned itself to enter our system based on its extensive role in the US. We emphatically reject the notion that private companies in competition with each other can improve on the publicly run collective liability system we now have. We are convinced that the only way private insurance can offer substantially lower rates to employers is through substantially lower payments to injured workers.

In Alberta, a group of employers commissioned a study in 1990 to explore their opinion that private insurance would be a more cost-effective option for delivering workers' compensation. You probably have a copy of this study. The study concluded that generally the WCB is equally as efficient as the private insurance industry in the overall delivery of benefits. The study carefully delineates the factors which make private insurance seem less expensive at first glance. For example, private insurance companies are stringent in selecting what risks they are willing to cover. High-risk industries, especially small ones, tend not to be covered. WCBs must cover all risks.

Compared to the WCBs, private insurance companies pay more limited and lower benefits and provide limited, if any, rehab services. They rarely include a cost-of-living adjustment. Private sector plans are generally last payors:



The amount of benefit payable from other plans is deducted from the insured benefit. In contrast, the study points out that a major cornerstone of the workers' compensation system is the assumption of the role of first payor.

Should the WCB system be privatized, these factors would be eliminated by the legislation as cost-saving features. It is important to remember that our WCB pays, as part of its administrative costs, for much more than claims. In Ontario, our WCB's administrative costs accounted for about 12% of total expenses, which included reimbursement for the costs of the Workers' Compensation Appeals Tribunal, the office of the worker adviser, the office of the employer adviser, the Occupational Disease Standards Panel, the Institute for Work and Health, the Workplace Health and Safety Agency and the administration of the Occupational Health and Safety Act. Private insurers do not have such comparable costs and yet, for example, the administrative cost for the Sun Life Assurance Co in 1993 was 30% of expenses.

The Alberta study found that the administrative costs for private insurers were somewhat lower than the Alberta WCB's, but that this was offset by the cost of sales and profit to the system, resulting in higher actual cost: WCB 18%; private 22%. The study also found that overall the WCB was able to cover more of its cost through interest on investments than private insurers.

The results of this study have caused at least the Alberta government to abandon its interest in privatization. We urge you, the Harris government, to do the same.

There's a big push for privatization of the workers' compensation system from some sectors, and this is being encouraged by the insurance companies themselves. Business which supports privatization does so in the belief that it would result in lower rates. Study has shown that WCBs are efficient deliverers of the system, and under the collective liability system, smooth out what would otherwise be prohibitive costs to the smaller and to the more risky enterprises. Privatization will not produce lower rates for employers, unless it does so to the detriment of injured workers by providing the least possible service to them. This is not an acceptable tradeoff.

I would like to add one final point of particular concern to those of us who live in the north. We do not have enough doctors, particularly specialists, to give us the level of treatment, in a timely way, which we require. Ideally, we want more doctors living in our communities. In the meantime, the WCB should be willing to fly injured workers for appointments and treatments where they can receive the attention they need without waiting months for an appointment. The delays in appointments can significantly delay recovery and return to work. With the current two-year limitation on re-employment obligations, this is of particular concern to those employees with serious injuries.

I'd just like to say thank you for allowing me to speak to you, I would prefer to answer any questions you have

on the modified work. Unfortunately, due to work obligations, my cohort couldn't make it. I am the modified work guy. If you'd like to ask me any questions on that, I'd be happy to answer them.

**Mr Patten:** Thank you, Mr Turner, for coming this morning. I found your brief quite interesting and I think you're right on the mark in terms of some of the worries of privatization. In many ministries there are many aspects that are privatized and there are lots on the burner at the moment. I know in the vocational rehab area the WCB has already proceeded in its plan to devolve in that area.

One fascinating area I found with your brief was that I'd like some more information on your own in-house program for return to work. You're saying your experience shows that it's far more successful than what you believe the WCB is now or could be in the management of that program. Could you elaborate more on that, please.

**Mr Turner:** What exactly would you like to know? From step one right through the first meeting with —

**Mr Patten:** Yes, kind of how you manage it and what you think is different.

0940

**Mr Turner:** I guess the secret behind our modified work program was that it wasn't something where our employer said, "Okay, this is what we're going to do; this guy isn't going to be off on WCB." It was a joint effort between our union and our employer and it was developed with a consultant. So everybody had input into it.

It was a program developed for equality for everyone. We'll just talk about an injured worker who is injured in the workplace. The person would receive what we call a fit-to-work form, which is filled out by the doctor. It has a list of working parameters for the injured worker. There is no diagnosis on this form, so it's kept completely confidential. It's just things such as if the person has a lower back injury, there's an area on there where it says, "Lifting: Yes or no? How many kilograms? Bending: Yes or no? How many kilograms? Twisting? Prolonged standing? Prolonged sitting? Prolonged walking?" etc.

The doctor would fill that out. We follow the parameters. The doctor has an area for comments where he or she would put in what the injured worker can or cannot do. We follow those completely. If the doctor says, "No, this person cannot return to modified work," then that's what we follow. That is gospel.

Each department in the mill was asked to give a list of jobs that could be specifically put aside for modified work. We have a binder when we go into the meeting — and by the way, the meetings involve the company supervisor, the company plant nurse, the injured worker and the modified work representative from the union. It's a non-confrontational meeting. The company nurse and the modified work union representative are basically facilitators, and the supervisor and the injured worker work out what they're going to do. We go back to this list, pick a job and the person is back to work, as long as it follows

the parameters of what their physician has said they could do.

If everybody is interested, I can run back to the mill and get copies of our modified work program if you would like to see it.

**Mr Patten:** Very much so.

**Mr Turner:** Okay, I will do that this morning for you and bring them back. How many copies would you like?

**Mr Bart Maves (Niagara Falls):** One would be enough.

**Mr Patten:** We can make copies ourselves. Based on what you're talking about — we've been struggling with trying to find the best possible arrangement — this looks very exciting and the closest possible arrangement one could have in the work environment, so I think the whole committee would be very interested in this and this may be very useful.

**Mr Turner:** I will have that before lunchtime for you people.

**Mr Patten:** Terrific. Thank you very much.

**Mr Christopherson:** Thank you for your presentation. I would like to raise two areas and ask you to comment further. You spent a fair bit of time talking about concern over privatization and we know that under this government anything that moves is subject to privatization as long as they've got pals who can make money at it. When you state very clearly, "We are convinced the only way private insurance can offer substantially lower rates to employers is through substantially lower payments to injured workers," we know that's the game.

We also know that regardless of what the government purports here this morning, and I suggest you'll hear something that gives all kinds of denials, the reality is that we know the large insurance companies are just salivating at the door, waiting to get their hooks into the WCB. If the government were really interested in improving the system, it would not have killed the royal commission which was almost finished its work in terms of looking at how to improve the existing system, rather than saying they just want to sell it off to their pals. That's one area I'd like you to expand on.

The other one is — it came up yesterday in Sudbury — on two occasions employer groups supportive of the government's Bill 99, who thought there ought to be a three-day waiting period, were disappointed that Minister Witmer didn't include a three-day waiting period in her proposal. I notice that you state, "In the meantime the WCB should be willing to fly injured workers for appointments and treatments where they can receive the attention they need without waiting months for an appointment." It's interesting that one of the presenters yesterday certainly left the impression with me that they thought that for the time that was lost trying to get proper medical attention, because of the distance here in the north and the issues you've raised, the penalty ought to be borne by the injured workers, that somehow it was their fault they were injured

in the north where there isn't the same kind of medical service as in the south.

Any comments you might have further to privatization and also your thoughts on a possible three-day waiting period and what that might mean for the people you represent?

**Mr Turner:** First of all, I'd like to comment on the last point you made there. I have an injured worker I'm trying to help with some compensation problems right now. This person has to get a CAT scan and Thunder Bay happens to have a CAT scanner. This person was told, I believe it was four or five weeks ago, that they were going for the CAT scan, and this person is not getting in for their CAT scan until the end of September.

It's painful, number one, being an injured worker, and it's painful to me seeing something like that happening when this person lives about three blocks away from the CAT scanner and they can't even get in to get the diagnosis they need. That's probably one of many horror stories you people are going to hear. Privatization, a three-day waiting period — that leaves a real bad taste in my mouth.

I am an injured worker. I had an amputation to my hand 10 years ago. My big concern then, because I had a very young family at that time, was (1) am I going to have a job to go back to — I guess that was my greatest concern — (2) am I going to lose my whole arm, and (3) what are people going to think about me now?

If I had to wait three days, that would kind of make me feel like a criminal. To me, that is saying: "I guess you wanted the time off. We'll just throw our hand in that machine, chop off a few fingers and get a little time off." My little time off ended up being about 12 operations, gangrene from my little finger up to my elbow and four years and two months off work. It wasn't pleasant at all.

When I go over Bill 99, to me it's like somebody is trying to place the blame on me as an injured worker. That's my gut feeling. We don't go to work every day, trying to do our thing, trying to follow our careers, trying to support our families, trying to help our economy, with the thought: "Maybe I should go and cut something off today. The board will give me a whack of money. I'll have this wonderful NEL or this wonderful FEL for the rest of my life and I can go and buy that new four by four I want." That just doesn't happen. People don't go to work saying to themselves, "I'm going to get hurt so I can get some cash from the board." It just doesn't work that way. That's my personal feeling on that.

**Mr John Hastings (Etobicoke-Rexdale):** Mr Turner, could you elaborate a little more in terms of your return-to-work program that you have set up? Aside from the structure and how it operates, could you provide us with some background on the type of jobs that have been modified so you've got people back to work in your workplace? Would you say that aside from the way the agreement between the employer and your union has structured the package, it is the type of jobs that are available and the



flexibility within your workplace that has made your modified work program more successful?

My second question relates to what specific reservations you have in the return-to-work part of Bill 99 that would in effect obstruct your existing successful return-to-work program.

**Mr Turner:** The part of Bill 99 that is scaring me is when somebody tells me I can't see my doctor, with whom I'm comfortable, who knows my background, when they say, "No, you don't see them; you see this one." That would play mentally and emotionally on me in healing.

As far as the six-week thing is concerned, where it's decided whether you're allowed compensation or you just continue employment, I'm pretty confused on where that is supposed to go.

With our program being put together by the union and the company, it was made fair to all. I can't see someone sitting in Toronto, who has never seen my workplace or even been to my neck of the woods, being able to make a clear decision on how I or a co-worker should be able to return to work. Does that help you out at all?

**Mr Hastings:** A little bit. I'd be curious about whether the range of jobs you have lends to some degree to the success of your program, aside from the environment and negotiating.

**Mr Turner:** Certainly we have a lot of different departments; it is a big plant. But when we started this program, we did have a problem with some departments. There were companies that were being a little stubborn about it and didn't want to get on board with everything. But we got that straightened out. It's quite easy to go over their head. But everybody has fallen into place; the program is running 100%.

Certainly with any program — I can pour a glass or water or something for four people and the fifth one won't like the water. It's like that with any program you're going to have.

**The Chair:** Mr Turner, on behalf of the committee members, I thank you for coming forward this morning. We look forward to the details of your program.

0950

#### INDUSTRIAL WOOD AND ALLIED WORKERS OF CANADA, LOCAL 2693

**The Chair:** I call the representatives from the IWA, Local 2693. Your 20 minutes may be used for your presentation or you may allow time for questions.

**Mr Joe Hanlon:** Good morning. My name is Joe Hanlon. I am the financial secretary and safety director with the Industrial Wood and Allied Workers of Canada, Local 2693. With me is our first vice-president, John Lorenowich. We represent about 4,000 people, covering a large geographic area from the Manitoba border to Sudbury.

I guess I should be pleased that we were given the opportunity to express our concerns regarding Bill 99. We are more fortunate than the approximately 1,600 people

who were refused the same privilege. However, we are not pleased with you and your government. You have your minds made up and you don't care what we have to say. This government has never listened to labour's concerns. The only opinion you want to listen to is that of the employers, academics and bureaucrats in government offices. It is time you listened to ordinary people in this province. You could learn something, like the fact that human life is far more important than profit.

Last week it was reported that Ontario is the third-worst polluter in North America — not something to be proud of, yet this government must be. Your proposed changes in Bill 99 show the rest of the world that Ontario is working towards being the number one place to kill and injure workers legally and that companies will be rewarded as long as they can hide it. That must be why, through Bill 99, you want to remove the Occupational Disease Panel.

But if you stopped for a moment and thought, the Occupational Disease Panel has saved thousands of lives and the WCB millions of dollars by conducting independent research on workplace disease and identifying the relationship between disease and the workplace. Once the cause was evident, then we have been able to prevent future diseases from occurring.

In the 1970s it came to light that some of our members and others who worked in sawmills and industry were having respiratory problems. A number of studies were conducted, and they found that exposure to wood dust can cause respiratory disease and cancer. Now, better house-keeping, ventilation systems and separate booths have helped to prevent long-term health effects, which has saved lives and reduced financial compensation for the future. However, we have members who work in the woodlands who may not be as fortunate. Companies are changing to chippers in the bush. This has created some respiratory problems for truck drivers and chipper operators because of all the dust. Will these people be compensated in the future? Or will the cost be downloaded to our social programs and health care system because no one will be able to make the workplace connection?

Bill 99 intends to eliminate chronic workplace stress. How? Take away a worker's right to compensation, take it off the books: problem solved.

We know technology is changing rapidly. We know companies are following the Harris government's trend of downsizing. We know there is medical documentation which identifies workplace stressors. We know the causes that lead to psychological disability. We know Bill 99 encourages employers to harass and intimidate workers. We also know that you know. There is chronic workplace stress, and because we all know it exists, we should be working toward prevention, not removing it from the act and pretending it doesn't exist.

Let me ask you: Why Bill 99? Why the changes? I have heard a lot of bogus answers from the Minister of Labour and the Premier. Why can't your government just admit

you don't care about the ordinary working people of Ontario? There is no other reason. It can't be because of money. If it was, you would have had the WCB collect the more than \$170 million owed by employers — bad debts — or possibly passed legislation that would have forced banks and insurance companies to pay into WCB, to cover their employees, just like British Columbia.

It can't be because the WCB is in financial ruin. They have seen administration costs drop 8.3% in only two years, from 1993 to 1995. They have never borrowed a dime and have \$8 billion in assets. In 1995 the WCB was one of the top 10 profit-making corporations in Canada with a profit of \$510 million, and by the year 2014, under the current system without any changes, the unfunded liability will be paid off completely.

It can't be for employers. You wouldn't think so. They already pay less than 2% of payroll, a small price to pay for insurance in case you kill or maim someone. They are among the bottom third of North American employers when it comes to paying WCB premiums. In 1994 they received \$359 million in rebates compared to \$337 million paid to injured workers with temporary disabilities. Some Ontario employers have even seen a refund of as much as 80% of their premiums. Employers have also benefited by the drop in new claims costs from \$2 per \$100 of payroll in 1993 to \$1.68 in 1995.

So I ask again, why Bill 99? Sure, employers will benefit from these changes and use it to their advantage. Who wouldn't? Just ask the fox who is put in charge of the henhouse. It may sound ridiculous, but that is exactly what this government intends to do. Why else would you give the employer the right to a worker's medical file without the worker's consent, force workers to ask their employer for a form to make a WCB claim, and allow an employer to force an employee to return to work, injured or not? — all this and more because the government doesn't care about the people they govern.

That's why you want to cut an injured worker's benefits from 90% to 85% of net, reduce the inflation protection of unemployed workers with disabilities by 75%, force workers to undergo risky operations or take drugs because it is cheaper than the treatment recommended by their physicians, cut future disabled workers' pensions in half, set time limits on chronic pain, eliminate the independent appeals system, place Workers Compensation Act decision-making under the control of an employer representative appointed by this government, deem workers to be able to obtain jobs which are not available and then set their benefit levels under the pretence that a job is available.

These changes will drastically affect an injured worker's right to be fairly compensated for being hurt at work. For some reason, this government seems to believe that a worker went to work one day and said to himself, "I am going to hurt myself today." Do you really believe people want to get injured at work so that they can take a cut in pay, continuously suffer pain, not play with their

children as they did prior to the injury, constantly see doctors and specialists, take medication and fight to obtain WCB benefits? We know they don't. A lot of our members, though, who come through our office have gone through all of these struggles.

#### 1000

One member even came into our office and told me he had no option but to go back to work even though his back had not healed. His reason was that his four children needed dental work, medication and clothes. You couldn't tell him that his condition might worsen, because he needed the money. This happened under the current system. The proposed changes would have forced him back to work even earlier.

People are on WCB because they have to be, not because they want to be. They were injured at work and need to be compensated fairly. You want to change the name of WCB to Workplace Safety and Insurance Board, WSIB. Do you really believe that by changing the name you can convince people that you care about their safety? The acronym is okay, because words which would be more appropriate and would show the real intent of this bill could be "Workers Shafted and Ignored Big-time."

You would imagine that your government didn't miss a thing in this bill. You've taken an act that had 151 sections and increased it to 178 sections. But just like your government's track record, you missed it on purpose. The most important issue that you failed to address, which would have saved money, injuries and, moreover, lives, is accident prevention. Once again you listened to employers who cannot see any immediate savings. All they can see are the dollars going out and nothing in return.

Accident prevention does work. Let's go back to the 1920s. That's where you're going with this bill anyway. Let's remember the hundreds of people who died in the forest industry cutting down trees. As time went by, everyone worked to reduce fatalities. Finally, labour, government and industry worked together and came up with a manual on the proper way to harvest a tree. Unfortunately, the fatalities still occur, but there are thousands of people who lived thanks to the accident prevention education they received.

There is example after example in every industry which proves prevention education works. However, your government doesn't want to deal with it. Instead, you want to go in the opposite direction. That's why you've dismantled the Workplace Health and Safety Agency, reduced funding to the Workers' Health and Safety Centre and made a mockery of our certification process.

Your bill is nothing more than a blatant attack on the working people of Ontario. You don't care how your changes affect injured workers, their spouses and children. You don't have to look into their eyes and tell them why their lives have been turned upside down. You just sit in your ivory towers and look down upon the people with no remorse, all for the sake of the almighty dollar.



If you had one shred of dignity, you would go back and tell Mike Harris and Elizabeth Witmer that if changes need to be made, there is a fair and equitable process that we have used in Ontario for years, or tell them to look at what British Columbia is doing right now. Industry, labour and government are working together on WCB reform as we speak. That's the way changes can and should be made.

Furthermore, ask them to read the Webster's Twentieth Century Dictionary and look for the word "democracy." It is defined: "Government by the people; a form of government in which the supreme power is lodged in the hands of the people collectively." As far as I know, we still live in a democratic society, and once you and your government realize that and are prepared to work with everyone — and that includes labour — and not just go through the motions as we are doing here today, give us a call. We are not afraid of change. However, we will ensure that our members and their families continue to maintain the standard of living they are accustomed to, something they have worked for and something they deserve.

**The Chair:** I would like to now call upon representatives from the Canadian Injured Workers Alliance, please, Mr Mantis. Good morning and welcome.

**Mr Christopherson:** Point of order, Madam Chair: I've waited until Mr Crevar was present because I think it's important that he and Mr Maves be here at the same time when I request yet again unanimous consent to place a motion.

Karl Crevar is the president of the Ontario Network of Injured Workers Groups, one of the key leadership entities in Ontario that has been demanding enough hearings that injured workers could be heard properly. At every community so far, I have tried to place a motion that would have this committee recommend to the minister and the House leaders that we extend these hearings and give injured workers the opportunity and the democratic right they're entitled to, to be heard on something as big as Bill 99. In every community, the government majority has denied me the opportunity to place that motion, and where I have been allowed to place it, they have voted against it. Mr Maves and Ms Witmer have been playing games, in my opinion, in terms of letters and correspondence and meetings when they have been responding to groups who have wanted time.

In the presence of Mr Crevar, who has been one of those demanding that injured workers be heard, and in the presence of the parliamentary assistant, who has a responsibility to carry back that message to the minister, I once again call on the government members to join us in the opposition in allowing unanimous consent so that I can place a motion that would allow these hearings to be extended so that injured workers can bloody well be heard in the way they are democratically entitled to be heard. Will you finally agree to allow that motion to be put, government members?

**The Chair:** Do I hear unanimous consent to such a motion? No, I do not hear unanimous consent.

Would you please go forward with your presentation.

## ONTARIO NETWORK OF INJURED WORKERS GROUPS

**Mr Steve Mantis:** My name is Steve Mantis, and whereas I am employed with the Canadian Injured Workers Alliance, because of the short time frame for confirmation to be appearing before these hearings, I haven't been able to gain consultation with our full board of directors to be able to present on behalf of the Canadian Injured Workers Alliance. Our member from Ontario is the Ontario Network of Injured Workers Groups, and through consultation with them, we will be presenting on behalf of our Ontario representatives. With me today is Karl Crevar, who is the president of the Ontario Network of Injured Workers Groups.

It's really hard to know what to say, when you have 20 minutes, about something that will have such significant impact on your lives — on our lives. I don't know about on your lives. I'm not sure what the accident rate is among MPPs. I'm not sure how much —

**Mr Christopherson:** Wait till the election.

**Mr Mantis:** I'm not sure that losing your seat in Parliament is equal to losing a function of your body, and I think this is the point of the presentation today. We're talking about human beings. This is what this is all about. For us and for the majority of people who are affected, it's about human beings and what actually happens to people as a result of a workplace accident that in too many cases ends up in permanent disability.

We've been active in this realm for a number of years, myself for about 18 years, and we have seen successive governments come forward with their new ways to fix workers' compensation. Each time it happens, there's a lot of hoopla: "We're going to make it work, and it's going to be great." There's one thing that has been consistent in each one of those reforms over the last 15 years, and that is that the workers and injured workers have been excluded from the process of designing the reforms to the compensation system. As a result, each one has failed. This initiative is following exactly in those footsteps. There has been no consultation with workers or injured workers on this piece of legislation. We're allowed a little time slot after it's all drawn up and after we hear quite clearly that the government is not about to make any changes of any significance in this piece of legislation.

### 1010

This is our token opportunity, with no real substance. That is again why Bill 99 is going to fail, because it's about human beings. If we don't understand what happens to human beings once they're hurt, we're not going to be able to design a system that is going to help those individuals and help our community to recover from that.

We've seen that workers' compensation has had very little analysis about outcomes, what happens to workers

once they're hurt. The real problems with the system are for workers who have a serious accident or disease and end up with a permanent disability. These are the minority of the cases, somewhere between 5% and 10% of the total, but in Ontario we have over 200,000 workers now with a permanent disability. That's a lot of folks, even though it's just that small minority. That's where the problems really come.

As injured workers and as our organizations, we've said, "If workers' compensation won't look into this, we will." We've been proactive over the last 10 years. Ten years ago we had a provincial conference here in Thunder Bay on rehabilitation of the injured worker and looking at what's going on across Ontario, across Canada, around the world. Two years later we had a national event in Ottawa on re-employment. We were the first people to start talking about re-employment. We've been saying the government isn't doing it, the WCB isn't doing it; we'll start stirring the pot.

In 1994 we started a study on return to work and what are the factors that influence the success or failure. The first thing we did was to phone every compensation board in Canada and say: "What are your numbers? How many people with a permanent disability go back to work? How many are presently employed?" They said, "We don't know, but if you find out, let us know." In fact, we did. We found out that approximately 75% of workers with a permanent disability are unemployed. We recently got some stats from the Ontario WCB that put that number around 78%, so our research is not too far off.

There are a number of other things we saw from this research. The survey was just workers with a permanent disability, that group where we think the real problems lie. Of those workers who went back to work, 60% were re-injured on the job. As a result, their disability was increased and most of those ended up in the ranks of the unemployed. How people go back to work, once again, has not been looked at at all from the human perspective. It's all been looked at from production: How are we going to get this person back producing again?

We've got some real failures here. In Bill 99, though it says nice things about getting people back to work, about preventing accidents, the substance is not there. The addressing what really happens to individuals as human beings is not there.

I can talk about some of that experience. When a person has a serious accident or disease, there are a lot of effects that happen. Not only your physical — myself, I lost my arm, okay? I no longer have an arm. There are all kinds of other things that happen. Fear is one of the biggest, fear of the unknown: Am I going to go back to work? Who wants me any more? Am I now just something that's going to be thrown out and left on the garbage heap? Will my family still respect me? If I can't go to work, if I can't bring home a regular paycheque, are my kids still going to like me? Am I going to be able to put my kids through school now? Are we going to have to go live on welfare?

All these fears, and what's going to happen? What's the WCB going to do, or what aren't they going to do?

From our research, the people who are successful at going back to work have substantial support from their family, their friends and their co-workers. The systems we've designed have all pretty well failed in providing that level of support.

Okay. So you become disabled. You struggle through the compensation system. The number of lives ruined is incredible. The number of lost marriages and families, where people lose their home and everything they own, and lose their future, is staggering. A lot of that has to do with the loss of control, that someone else is now pulling the strings. You don't know what the rules are and no one is there to help you, to tell you how it all works and to support you through that transition.

I lost my arm 19 years ago now. I happened to have a lot of things in my favour. I had a lot of support — really strong family support, really strong support from my friends — and went back to work fairly quickly. I just gave my all. Now, not only have I lost my arm, but it has effects on other parts of my body; my neck, my shoulders, my back are giving out. I've been to my doctor recently — my wrist is giving out — and he says: "You've got repetitive strain. That's just too bad."

What's the response of Bill 99 for a person with a disability whose condition deteriorates? It's to reduce your benefits year by year by year because of lack of protection from inflation. We're going back, as the previous presenter said, to the 1920s and 1930s and 1940s.

When I lost my arm, I met another fellow at the hospital in Downsview — same amputation. He was working at Massey-Ferguson: good job, union job, good pay. He had been hurt 30 years earlier, so we sat down and compared our pensions. I was getting \$650 a month as a newly injured worker; he was getting \$65 a month for that same level of disability that has gotten worse and worse over the years. Now, with Bill 99, that's what I and the rest of the injured workers have to look forward to: a decreasing level. As my disability gets worse, as it becomes harder for me to maintain my employment because more things happen to me, what happens? My benefits get cut back year by year by year. Is that what you think is fair? Do you think that as our conditions get worse we should get less money? I'd really be interested to hear your response to that, though I know this is a one-way thing and you don't get to respond; you only get to listen.

Also, we talk about healing and people getting better. Research done by the University of Toronto has shown that the WCB's treatment of injured workers causes stress and actually creates a greater level of disability. Then the WCB turns around and says: "You're not healing fast enough. You're uncooperative and you're going to be cut off benefits." That action is strengthened in this legislation, because now we'll have that set of healing times, and if you don't make it in those healing times, too bad. You're uncooperative; you're not trying hard enough.



A couple of the other initiatives we've taken: We have developed a video and workbook for workers who are hurt at work. Compensation has done a lousy job. The brochure you have before you talks a little about that. We've seen the failure of our governments and our bureaucracy set to help out, so we've been taking more control in that area and providing resources to people to help them gain that control over their lives, reduce their stress levels, heal faster and get on with their lives.

Also submitted was a video as part of the presentation. Last fall, we put a video together, in partnership with the Ontario Network of Injured Workers Groups — I wasn't able to make 25 copies; there is one copy that I hope can be shared — that we've used in community meetings around Ontario to try to bring people together to discuss these issues and try to develop some community solutions.

Like I say, there's always so much to talk about. I hope you read our brief and reflect on that, because I haven't really touched on too much that's in there. I'd like to turn it over to Karl Crevar, the president of the Ontario network.

1020

**Mr Karl Crevar:** Good morning. Thank you very much, Steve. I think you hit the nail right on the head in your presentation.

I'm not going to comment on the bill itself, because I want to share some concerns I heard this morning. I find Mr O'Toole's remark personally offensive, about presenters coming up and attempting to mislead anyone who's presenting here, any of the people here or any of the members on this committee. That was in reference to the first presenters. If there's any misleading being done, it's by the government in the form of Bill 99, where they're portraying a crisis in the workers' compensation system, telling the people of Ontario that there is a financial crisis when in fact there is not. If we're going to talk about misleading, let's put the cards on the table about where the misleading information is.

The other point I wanted to raise — I was appalled this morning; I keep raising the issue, and I can assure you I will continue to raise it — is the right for people to appear before a committee to express their views. Madam Chair, we had to call you to get into this room. The people of this community had to call the Chair of this committee to tell the police to open the doors to let the people come in. What are you afraid of? When we look at the makeup of the meetings — a motion was put forward by Mr Christopherson, and I consulted with Mr Maves yesterday — there is a way, if this committee is willing, to extend the hearings so the people of this province can have the right and have access to this committee so that the stories can be heard.

I say to you, look at your presenters list and what you've got. The people who are going to be affected, the injured workers in this province, represent less than 10% on your presenters list, and that's wrong. Are you afraid to hear the real stories? How can anyone, as Steve just men-

tioned, portray to you the real story and the real impact that this bill, which we consider the bill of death — that's your bill, a bill you're going to have to live with if you proceed with it. I ask you, in the name of humanity, the least you can do is go back and request to extend the hearings so that more people can be heard. Do the decent thing. Do the right thing. If you're not prepared to do that, we're asking you to go back to the Minister of Labour and to the Premier and tell them to withdraw Bill 99. Bill 99 will kill people.

When we talk about Bill 99, when we talk about changes to the workers' compensation system, let's get into the real world. I've heard a lot of comments. Mr O'Toole mentioned this morning the question of deeming. You're damned right they're deeming, and that's where people are being hurt, because they're being deemed. They're being deemed to be able to work when they're not able to work. They're being deemed on certain types of medication. That's not human talk; that's Big Brother talk.

I ask you, withdraw the bill, go back to the minister, go back to the Premier, start at the drawing board and talk to the people whose lives you're going to affect by making these changes to Bill 99.

**The Chair:** Thank you very much for your presentation. Unfortunately, there's no time for questions.

**Mr Crevar:** That's the whole problem, that the 20 minutes is up. How can people express their views?

**Mr Maves:** A point of order, Madam Chair, before Mr Crevar leaves. Mr Mantis, you said you submitted one copy of the video you mentioned in here. Have you also submitted a copy of the workbook?

**Mr Mantis:** No.

**Mr Maves:** Could you do that? At least one copy.

**Mr Mantis:** Why don't you fill out the little form and send it in? We've got funding available for injured workers groups that are low-income. I think people who have income might be interested in supporting the project.

**The Chair:** Thank you very much.

## AMALGAMATED TRANSIT UNION

**The Chair:** I now call upon representatives from the Amalgamated Transit Union, Mr Stephens. Good morning, sir. Welcome. You have 20 minutes in which to make your presentation. You may or may not allow for questions.

**Mr Dan Campbell:** My name is Dan Campbell. I'm here in place of Dave Stephens. I'm a member of the Amalgamated Transit Union and a bus driver for the city of Thunder Bay.

Now that you're here in the north, we should perhaps try and share some of the realities of growing up and living in the north. I grew up in a small town called Geraldton, where the major industries were logging and mining. At a young age, it became very apparent to us that these were dangerous occupations. As children growing up, we were continually reminded of perils of the workplaces. From time to time, fathers, brothers, uncles or grandfa-

thers of our classmates, neighbours and friends were killed at work. It wasn't uncommon to see someone come down to the school and haul the kids out; everybody more or less knew what was up, because the principal would be there and a member of the family. It was something we got to see on a relatively regular basis.

Living in a small, tightly knit community, everyone was able to see the impact on both the family and the community. As children, at the ages of 9, 10 and 11, words like "chico," "widow-maker," "rockbursts" and "silicosis" were in the vocabulary of kids because they were things that really affected us as we were growing up here. We could see the economic impact on the children we played with: the hand-me-down clothes, eyes that showed a nine-year-old carrying the weight of the world. But I don't believe I can express to you the profound sense of lost that children underwent as they saw their world fall down around them at the same time the ground was pulled out from under their feet.

Here we sit today contemplating legislation that promises to see such tragedies in these communities to families as yet unscathed. It's ironic that we now live in a province that values the bottom line of corporate greed and profit over the health and safety of its citizens.

I'm reminded of a funeral I attended as a member of the junior choir. The son of one of the senior choir members was killed in a truck accident involving a pulp truck. One of the most striking things in that experience was the complete and utter devastation of that pulp truck driver, to see him basically prostrate before the congregation feeling just terrible about what he had done, what he felt he was responsible for. In fact, there was no fault. It was just a regrettable thing that happened.

Here we sit again. I believe that while you enjoyed the prestige of the powers vested in you as members of the standing committee, you have little understanding of the responsibilities vested in you. Understand that reducing the cost of workplace tragedy will only allow it to increase. By your participation in and support of this legislation, you will truly be responsible for the deaths and injuries that follow. But unlike that truck driver, I doubt you'll make it to the funerals, because I doubt you have the strength of moral character to take the responsibility for your actions. If you did, I sincerely doubt you'd be willing to sit on this panel.

1030

If I seem somewhat cynical, somewhat jaded, I can only tell you that the hand of fate that touched so many families around us also touched the lives of my family. On August 22, 1979, while in the employ of the province of Ontario, my 16-year-old sister was burned to death with three close friends and three co-workers all under the age of 17. One adult, the eighth, was seriously burned, scarred physically and emotionally for life. I also believe that that man took responsibility for a tragedy not of his making, while the government of the day spent in excess of one year on an inquest trying to avoid its responsibility.

I think you have to understand that people die out there. They're not only injured, but they die.

The surprising thing is that the document generated by the inquest was about yea thick but boiled down to the fact that they died of stupidity and arrogance which, to my own personal horror, is reflected in the government's continual attack on working people.

While I sit here before you today, I even question whether you're actually listening or if I'm being heard. If you believe the government of Ontario is one of the best and safest employers in the province, I have information that would tell you otherwise. As Ontarians, I believe we have the right and the obligation to expect that of government, but it seems you have little understanding of the impact on working people. Perhaps it's due to your perspective. Maybe, growing up in the south, you see workplace injuries as paper cuts and bruises from walking into paper machines. Maybe in larger cities you don't see the strain on families coping with the loss or injury of loved ones and the economic harm it brings. Or if you've seen these things, maybe you've just forgotten.

Maybe you don't understand that the best way to save money on WCB costs is to prevent the accidents from occurring in the first place. It can be done. When I started working for the city of Thunder Bay, we had an average of six to eight people on compensation at any one time. However, with the investment of my employer in power steering, better seating and better training of employees, the experience in my workplace seems to have dropped to half. But the legislation before us makes the investment by employers unnecessary. Worse, it seems to place the responsibility of workplace injuries on the worker, the victims of this legislation.

We don't go to work to be maimed or killed. We work to support our families and society as a whole. We endeavour to fulfil our obligations to our employers, our creditors, not to mention to our families and our community. Within the WCB Act we forfeit our right to civil suit against our employers for their negligence, and trust that our governments will protect us, but that's not what's happening here. You're selling us out to the highest bidder for the lowest common denominator: the easy, quick buck. The real tragedies are yet to come, and rest assured, they will.

If you allow this legislation to pass, fate has a way of coming back at you. If you have families, understand that tragedy can reach out to you, that with diminished workplace safety you will place them in harm's way. Three of the youngsters who died that day came from southern Ontario, possibly some of your ridings. When we fail to learn from history, I only fear it has a habit of repeating itself.

**The Chair:** We have three minutes remaining per caucus for questions. We'll begin with Mr Christopherson.

**Mr Christopherson:** Thank you, Mr Campbell. That was one of the most moving presentations we've heard anywhere. I don't have a lot of questions, because I think your presentation made the points, but I did want to ask



you one. In your review of Bill 99 and your own experience in terms of your personal loss, are you aware of anything in Bill 99 that seems to address what Steve called the "humanity factor" or that in any way seems to help injured workers, or does it look to you like everything in Bill 99 is just taking it backwards?

**Mr Campbell:** Interestingly enough, the gentleman who survived was a native Canadian about 56 years old. He felt devastated by what had happened. I believe Bill 99 would go so far as to remove the benefits for workplace stress. If you're working with seven kids and you try to save their lives and fail, run through a wall of fire, basically burning the skin off every digit on your hands while covering your face, I guess you undergo a little bit of stress along with it. Had he not been so severely injured, I believe this bill would see him non-compensable for dealing with that stress. I think the stress on this gentleman eventually led to his death.

**Mr Christopherson:** I want to thank you again very much for coming forward. I can only hope that the government members, who have the power to do something about what's before us, are listening.

**Mr Campbell:** It was a Conservative government in 1979 and it's a Conservative government now, and I hope things don't repeat themselves.

**Mr Joseph Spina (Brampton North):** Mr Campbell, thank you very much for an impassioned presentation. I appreciate that. I wanted to ask you a question, and I'm just going to preface it a bit, if I may.

When the former minister of WCB, Cam Jackson, began developing the inquiry to get to this bill, he had talked to something like 150 injured workers and there were also 200 formal submissions made. We've also heard a number of presentations, both in Toronto and these first couple of days in Sudbury and here, from the various advocacy groups for the injured workers. Obviously, what has come forward from a lot of these presentations, probably most vividly by Mr Mantis in the last presentation, is that a lot of the problems experienced by injured workers with WCB didn't just surface in the last 24 months; they've been around for a while.

Mr Campbell, what would be your highest recommendation in terms of what you think should be addressed in changing the WCB to best address the needs of the workers? Bill 99 aside, just tell us what your priority would be.

**Mr Campbell:** Currently the setup with WCB involves confrontation. Adjudicators are pitted against workers, and they have a tremendous workload, people continually calling up to find out what's going on with their claim. There's a real adversarial situation created by the board where the rubber meets the road. We spend more time arguing and bickering over stupid things than in actually dealing with the problems. I think when that's addressed you'll see things improve.

**Mr Spina:** So it's the attitude of the case worker, maybe the communications with regard to the —

**Mr Campbell:** It's not the attitudes; I'm talking about the physical setup of workers' compensation, where anything done there is usually done in an adversarial situation. If the board is truly there to assist injured workers, it has to get away from that adversarial situation; it has to start looking at what's going on. Things have to change within the structure of the board.

**1040**

**Mr Spina:** You indicated that southern Ontario is out of touch with northern Ontario.

**Mr Campbell:** That's my perception. I've never spent much time in southern Ontario, so I truly don't know. Maybe I'm out of touch with southern Ontario.

**Mr Spina:** If it's any consolation, I doubt it. I grew up in the Sault, and even though I'm from southern Ontario now, I lived there until I was in my mid-20s and I know what it was like to be around Algoma Steel and Abitibi Paper in the Sault.

With regard to the WCB — this is back to the confrontation thing you talked about — would it be of any help if the northern Ontario regional offices of WCB were more in touch with the injured workers here? Where's your closest contact with the board?

**Mr Campbell:** Typically, directly with the adjudicator. If things fall off the tracks, you're in no man's land and you're basically banging all over the place. I think there has to be a real effort by WCB to deal with injuries. Prevention is the key. It's not about cutting the benefits to employees, it's not about forcing them back to work before their time. Preventing the injury in the first place is the only sane way to go.

**Mr Patten:** Thank you for your presentation this morning, Mr Campbell. I'd just like to underline some of your comments, because what we're really talking about is the purpose of the board. We've heard this from a number of presenters. There is an acknowledgement of a shift; the change in name, in one sense, says it all. It looks to me and to a lot of people like the shift is that it's not a workers' compensation program any more, it's an insurance company, that that's the model. An insurance company looks at minimizing benefits and maximizing its control and supporting its financial position, which any organization would have to do to some degree in terms of controlling its financial position.

I think the government, in the last election, appealed to a certain population of people and propagated the idea that people who use and receive compensation are fraudulent and take advantage of the system and abuse the system. They developed a mythology in the general population that there's a lot of abuse going on here and that these people are out to get something for nothing. I think that's what the unfairness is, this perception now that we have to knock back and change.

I think it's based on that. The shift, in my opinion, is based on a very negative thing. That's why it's so bloody difficult, not only now, but I believe it will be even more difficult in the future for somebody to get compensation,

because they will be challenged about the appropriateness or whether it's really true about their injury and this sort of thing. The assumption is a negative one, not a humane one, not a compassionate one. I don't know if you have any response to that.

**Mr Campbell:** In all truth and honesty, I would go so far as to suggest that there are those who would believe that my sister feigned her death as well. I talk about death in the workplace because it has touched me, but coming out of mortality is morbidity, injuries on the job. They go hand in hand. Deaths in the workplace are no more faked than are those injuries. When a government climbs to power by slandering the helpless, these are things that we as a society have to guard against. Having used it as a tool in an election campaign, the government at least has the responsibility to back down from such an asinine position.

**The Chair:** Thank you very much for your presentation today. We appreciate your taking the time to come before us.

#### UNITED STEELWORKERS OF AMERICA, LOCAL 5055

**The Chair:** I'd now like to call upon Mr Smith from the United Steelworkers of America, Local 5055. Good morning, sir. Would you introduce both yourself and your colleague for the record, please.

**Mr Rob Smith:** For whoever needs it, the copies of the brief are here. The gentleman on my right is Tom Chauvin Jr. He is the president of my local at Pascol Engineering where we work.

I'm here to address you on Bill 99. As you'll see on the first page, I consider Bill 99 to be future past and past future, and we'll explain that as we go through the brief.

Thanks today for the chance to put forward to you our brief and our local union views. It's my firm conviction that if Bill 99 passes the Legislature as it fundamentally stands now, compensation matters won't be moving towards the betterment of its stakeholders: workers and employers. Our future is going to regress to our painful past and our past will once again become a reality of our unchanging future.

That's the that Bill 99 brings forward to you. Mike Harris's Common Sense Revolution: In your examination of Bill 99, I hope you realize it does not make any common sense at all. What you're doing here is moving backwards, not forwards. You're putting us back to the past and that isn't common sense.

Tom and I come to you from a workplace at Pascol Engineering where we do shipbuilding and ship repair, and when we're not doing that type of work, we do large-scale general industrial projects for the forest and mining sectors.

I come to you with 17 years of experience in health and safety and compensation representation. At this time I'd like to speak to you on three specific areas in the bill: (1) the structure of the board of directors as it stands now; (2)

the elimination of the Occupational Disease Panel; and (3) the proposed limitations to WCAT.

Bill 15 went ahead and rearranged totally and fundamentally the past structure of the corporate board of directors. The way it was designed in the past was that you had labour and injured worker representation on the board. If you're not aware of it, one of those people, Steve Mantis, used to sit on the board of directors, representing injured workers. At that time, at the level of the board, when policy and changes and whatever came to the board's purview to take a look at, workers and injured workers had the chance, in an equal forum, to put their concerns forward, debate them and have workers, people like myself and Tom, have our views and whatever brought forward to you.

The way it stands now there is no representation for workers and injured workers on the board. If you take a look at it now and see the interests and where the people on the board come from, they either represent small business or large business, and it's a corporate view. It doesn't have anything to do with workers and injured workers. Again, I put it to you: Does that make common sense? One sector, probably the largest sector of your population, has no view and no say at that level.

#### 1050

In 1913, when Meredith brought down his report that framed the foundation of the Workmen's Compensation Act in 1915, one of his underlying thoughts at that time was, "If those who benefit and profit most in the work being performed by workers do not pay the costs for the injury and illness being inflicted on those workers, then it will diminish their reason(s) for doing anything to prevent the damage." Until you go ahead and realize that your present structure of the board of directors doesn't reflect workers' and injured workers' views, I don't think we're going to see any justice.

I have a poem here that I think puts the idea of justice forward to you. It's called Justice and it's written by a miner, a worker:

Justice sat on her golden throne  
with her golden scales, aloof, alone  
Pondering long with her golden eyes  
our mighty throng, its swollen size  
Asking what she well could give  
asking only enough to live  
Ever then with a shuffling gait  
we were joined by others who came to wait  
Broken and twisted, with poisoned lungs  
asking justice with a thousand tongues  
For none knew better than we who were there  
our time was short, we'd none to spare  
There were cures for drink, disease and narcotics  
but there was only death for we, silicotics.

In summation, on the board of directors, until we have an equal say once again, I don't see how you can talk about justice being available to workers and injured workers.



I'd like to tell you something else. I come from a workplace, and in February 1983 we killed three people in our workplace, and then subsequently, in June of that same year, we killed two more. Tom and I were both intimately involved in the deliberations that went on, the inquiries and sitting with the government and our company, and I come to tell you that you basically have to kill somebody in a workplace before you see fundamental change.

That's the belief system I come from, and we proved it there. We got involved in a tripartite system where the union, the government — through the Ministry of Labour — and the company sat down, and we went ahead and changed our workplace around, but we only did that, we only accomplished what we accomplished in our workplace, by being able to work together and the union having an equal say and voice in the changes that took place to bring our accident frequency down and to make our shipyard, our establishment, one of the better places to work in and sort of regain the confidence of our members, that they weren't going to work to be maimed and die, that it could turn around and become a healthier and safer workplace.

Let's take a look at the elimination of the Occupational Disease Panel. In 1915, when the act came into place with schedule 3, entitlement to compensation for occupational disease was recognized. In 1985, the Industrial Disease Standards Panel was created, and in 1986 you changed its name to that of the Occupational Disease Panel. In the 72 years from 1915 to 1985, the act recognized entitlement to compensation for workplace diseases and injuries in 24 cases. In the period from 1985 to 1986, the ODP recognized the causal link to workplace occupational disease and injury, as its mandate directed it, in 13 cases.

In less than 10 years of the ODP being brought into place, they fundamentally changed the act and recognized that there was a direct link between workplace exposure and the onset of the diseases and injuries that the workplace causes. They used sound scientific and medical protocols to determine these things, and if you take a look at their panel structure, they had members from the scientific and medical community, government and labour all putting forth their expertise, and it's a system that worked.

You state that one of the premises of Bill 99 is to secure the financial stability of the compensation system for injured workers and to promote the prevention of injury and disease in Ontario workers. I speak to you and I tell you that you are going against what the bill is designed to do when you go ahead and you eliminate the Occupational Disease Panel. That panel is a necessity, and it's a necessity that it have a mandate at arm's length from the board to be able to determine its mandate and bring into place the necessary knowledge and compensation entitlement for those workplaces that go ahead and do bring maiming, illness and disease and fatalities to the workers who work in those places.

They have also, by their expertise, by the recognition of occupational diseases and injury, caused the workplace to

get cleaned up and it does get cleaned up. When you recognize a causal link between workplace occupational disease and injury, that forces the employer to go ahead and become a better employer in health and safety and compensation, and it makes sense to the employer.

It doesn't make sense to me to talk about the elimination of the Occupational Disease Panel and bringing it back under the board's direct control, because what's going to happen is you're going to have more workers dying in the workplace, and the knowledge of what's causing those diseases and injuries and deaths won't come about until it's happening right in front of your nose.

Statistically, for epidemiological studies, you have to have an overwhelming mortality rate of two to one before anybody's interested in trying to prove there's a linkage in the workplace between the diseases and the injuries that are coming from it. Right now the only way you can have the board get involved in something is if there's overwhelming proof that something's wrong in the workplace, and then you may decide to go ahead and appoint a commission to do the ODP's job. Right now the ODP's doing a damn good job and you're trying to kill it because it's proved to be costly. Again I put to you, does that make common sense, to take away something that's proved to be effective? You tell me.

Last and not least is the point on limiting the independence of WCAT. Very frankly and very briefly, in all the we're hearing from labour and its representatives and injured-worker representatives, we're hearing that there's a growing groundswell of opposition within the employer community about the potential of your Bill 99 amendments to WCAT in limiting it.

On employer issues relating to second-injury enhancement to the NEER and CAD systems, when it has to go to the WCAT level and the employers are putting their issues forward, they are getting good decisions and they have liked the decisions WCAT has brought down. Labour has always said, "We'll take the chips as they fall." We've got some good decisions — the chronic pain is just one outstanding example of it — but employers have had their kick at the cat and they have found that WCAT has been as good to them as it has been for labour and injured workers. I say to you, in your deliberations on third reading, leave the present legislation for WCAT alone.

Conclusion: A compensation agency truly concerned with fiscal responsibility and the prevention of injury and disease in Ontario workplaces should realize that these concerns can only be effective when both worker and employer stakeholders work as equal partners under the law to produce actions and activities that reduce the hazardous injuries and diseases of the workplace. We can produce these changes, but we can't do it with Bill 99.

1100

**Mr R. Gary Stewart (Peterborough):** Thank you, sir, for your presentation. I'll be very quick and give you a chance to answer. What kind of relationship do you feel

there should be between WCAT and the board? If you had a perfect structure, how would you suggest that work?

**Mr Smith:** A perfect structure?

**Mr Stewart:** Yes.

**Mr Smith:** I would argue personally that the present legislation for WCAT only needs to have one change, and that is that when WCAT renders a decision, the present legislation that allows the board to take a look at that decision and freeze it until the board can make a determination on that should be gone. WCAT should truly be an independent arm of the Ministry of Labour and should do its job and should interpret as it sees fit.

**The Chair:** Mr Gravelle is next. By the way, I should say that we're very pleased to be here in Thunder Bay, in Mr Gravelle's riding, and we're glad he's able to join us this morning.

**Mr Michael Gravelle (Port Arthur):** Thank you. Good morning. A couple of quick things. On WCAT, I guess the thing that bothers me the most about that is, it ties in with some other directions this government is going in. Whatever tribunals are out there are all being, in essence, changed to make it that they can literally only deal in terms of policy that is set by the board or by the government. The Social Assistance Review Board is the same sort of thing. To me, what's happening is that the government is able to say, "Oh, we've got this appeals tribunal in place," but in essence it's one that's so limited in terms of its scope, and the membership is so set up, that they're just simply going to follow policy.

The loss of independence, to me, makes them — I would hesitate to call them a farce — not nearly as useful in terms even of the government as they should be. I think that's wrong and obviously you agree. One of the big battles we have is to say to the government, "Either you have a tribunal, whether it's WCAT or the other ones, that's truly independent or don't pretend you have one." I take it you agree.

**Mr Smith:** Yes, I would concur. I would just say that if you undertook to have a review of all the decisions that WCAT brought down, you would see that their reflections and their deliberations reflect a balanced approach.

**Mr Gravelle:** That is important. On the Occupational Disease Panel, the important point you're making I think is that eliminating it, absorbing it into the WCB itself doesn't make any sense, even in terms of the long-term costs. If the government's concerned about worker safety and about the workplace itself, maintaining the Occupational Disease Panel as an independent scientific place would not just be good for the workers, but good indeed for the long-term health in terms of workers, which is going to be better for the government itself. It's a strange decision in that sense.

**Mr Smith:** Yes. I would also say that with the demise of the ODP, all of those costs that are assessed because of injured workers going off the job and remaining off the job and being on their companies' sick plans, or being on welfare because they get put there, the proper economics

are not being followed in that if this happened in the workplace and they can't prove it happened in the workplace, the costs should be coming out of where it's occurring. If the employer has a workplace that is causing these diseases, the economic costs should not be thrown upon the Ontario taxpayers to pay for it. It's the employer's responsibility to pay for it.

When you take a look at Meredith's report, it was their Final Report on Laws Relating to the Liability of Employers. That was the tradeoff on the five principles of the act, that said injured workers would get an income and that income would be funded collectively by the employers paying for it, and the employers then wouldn't get stuck having to be drawn into the court system to prove it. So we gave up these rights. We got an equal tradeoff, but the Ontario taxpayer is not going to get a tradeoff because all these hidden costs are once again going to be coming back to us if we eliminate the ODP as a tool for proper workplace health and safety and occupational disease injury recognition.

**Mr Christopherson:** Thank you for your presentation. Your 17 years' experience shows itself clearly as you speak to these issues. I want to raise two issues with you. One is that we ought not to be fooled with regard to WCAT. We know employers are expressing concerns, somewhat up front but more behind the scenes, to the government because they're terrified, I think, that the Tories have politicized the whole process so much that if their good friends the Tories ever lose power they could find themselves on the short end of the stick, so they like the idea that the independence of WCAT would be there. I suspect that change will be coming. The government will claim they did because they were listening to presentations like yours, but we ought not be fooled. It was very much because their employer friends have said, "We want that change," and all we'll see is the spin. So watch for that to happen. That's what we suspect is coming down the pipe.

In terms of the Occupational Disease Panel, one of the difficulties we have, and you must face it too, is that oftentimes the average person doesn't pay an awful lot of attention to the details of legislation, or things like the ODP look like they're sort of lost as minor details of major pieces of legislation. It's sometimes hard to get through, "Look, this is a crucial piece that has relevance for you." If you were speaking to one of the workers in this province who will be affected by the killing of the ODP, in your own words, how would you put it to average working persons that they need to be concerned about the loss of the Occupational Disease Panel under Bill 99?

**Mr Smith:** I would very simply say to them that by killing the ODP you're going to see the accident frequency rate for permanent impairments, permanent disabilities and worker fatalities start to rise again. We went ahead and proved under your government, when we enacted the Workplace Health and Safety Agency and the health and safety training that came down for certified workers and so on, and the statistics showed the recognition that edu-



cation of the working people was a necessary component. All that sort of died, and without that education, without government funding for it and government initiatives for it, without the education the ODP can provide from the studies they bring forth, you're going to see workplaces become less effective in dealing with health and safety and more effective in harming people.

**Mr Christopherson:** Just in closing, if I can — I know my time is up — you mentioned Bill 15 and the changes and that didn't get near the attention it should in terms of the tripartism of the board. The Workplace Health and Safety Agency, of course, was also equally run by workers and that's anathema to this government. That's another reason it went down in flames.

**The Chair:** Gentlemen, on behalf of the committee, I thank you for taking the time to come before us with your views this morning.

#### THUNDER BAY DISTRICT HOSPITALITY ASSOCIATION

**The Chair:** I'd like to now call upon representatives from the Thunder Bay District Hospitality Association, please. Good morning, sir. Welcome.

**Mr Mike Meady:** Good morning. My name is Mike Meady and I'm the chairman of the Ontario Hotel and Motel Association as well as a principal with East Side Mario's restaurant here in Thunder Bay. I want to thank you for the opportunity to speak before you today.

Our members have and continue to support the workers' compensation system, but in doing so recognize the need to correct a system that was in need of repair. The case for reform is undeniable. The WCB's unfunded liability, the difference between assets and liabilities, has increased by 470% between 1983 and 1994. In dollar terms that has gone from \$2 billion to \$11.4 billion. In the interim it has dropped slightly, but not close to giving anyone comfort that the crisis has passed. Correspondingly, the accident rates have dropped 33%, while employer assessment rates rose 46%.

Over the past 10 years, each political party has attempted WCB reform on the basis that the system was in need of repair. Despite these reforms — the Tories in 1984, the Liberals in 1989 and the NDP in 1994 — the unfunded liability continues to expand. This phenomenon has the effect of putting at risk Ontario's workers' compensation system, and with it the future wellbeing of injured workers.

1110

It is perhaps worthwhile to look back and see why Ontario's workers' compensation has come off the rails. One only has to look at the royal commission reports of 1950 issued by Justice Roach and of 1967 by Justice McGillivray. Justice Roach said: "This act should be considered for what it is and what it was originally intended to be: a scheme by which compensation is provided in respect of injuries to workers in the industry. It is not a system for dispensing charity. It is not special legislation for the pur-

pose of elevating the standard of a group in society at the expense of another."

He went on to say: "I will have an occasion to point out later that certain amendments which have been introduced to the act since it was originally passed are really in the nature of social legislation and a departure from the original scheme which was the purpose of the act. The effect of the amendments has been to impose upon industry burdens which should be borne by society generally."

It is interesting to note that Justice McGillivray reiterated in his royal commission report that Justice Roach's comments were still valid. Bills 101, 162 and 165 only continue to distort the system. Our criterion to support the workers' compensation system has been that it continues to be affordable, sustainable and competitive. The current system fails on all three accounts. We believe that Bill 15 with respect to the system's governance and administration is now in hand. Uncosted government amendments and expanded entitlements are being addressed in this legislation, but certain amendments we believe will meet the objectives.

Bill 99 is about fairness and equity in the workers' compensation system. It is also about ensuring that the system is sustainable in the future without jeopardizing the ability of the system to adequately deal with workers' injuries and employers' ability to contribute. The legislation is more about an evolution and could be best described as the result of past government attempts, as I mentioned earlier, to correct a system everyone agreed was in dire need of fixing.

Despite the rhetoric, which seems to accompany every change in the system, I suggest that you will agree the changes are better, or shall I say fairer, for both employees and employers. To truly achieve this notion of real fairness, we believe Bill 99 needs some changes. They're not major but critical in our view to having the new legislation meet the litmus test of fairness.

I would be remiss in not mentioning our disappointment with the legislation not including the three-day waiting period, as New Brunswick successfully introduced, in the definition of "injury." Employers advocate rewriting the definition of "accident," specifying that accident "means" rather than "includes" and adding compensation language to strengthen the link between disability and employment.

Employers further recommend deleting the presumption clause and replacing the benefit of doubt principle with the balance of probabilities and real merits and justice. We offer the following proposed amendments as a guide. The areas that require amending are as follows:

Wage loss, section 43: Bill 99 calibrates many of the shortcomings of the wage loss process, requiring benefits to be adjusted as the worker's circumstances adjust — a basic, simple principle, yet one lacking since wage loss was introduced seven years ago. However, Bill 99 confers extraordinary powers on the board which lead to a proliferation of appeals. For example, the bill will allow the board to deem a worker's earnings if a labour market re-

entry plan for the worker has been fully implemented without defining what "fully implemented" is. The government's intentions are lost in this vague language.

**Duty to co-operate, section 40:** A duty to co-operate for the worker and the employer is a positive innovation. However, much of this section is redundant and already covered under sections 41 and 43. We also cannot agree with the emphasis on fines, which it should be noted runs counter to the government's own pre-election commitments in this area. The need for employment searches also cannot be supported in this area as it is well covered under section 41.

Section 40 creates an additional and unended legal exposure for employers and needs to be rethought.

**Assessment rates, section 80:** Bill 99 provides a very broad discretion to the board in the setting of company assessment rates. However, individual disputes are not allowed to proceed to the tribunal. Inevitably, mistakes will occur in the board judgement and therefore disputes must be allowed to proceed to the tribunal.

**Stress, section 12:** Bill 99 removes the board's jurisdiction to consider claims for chronic occupational stress, which will open the door for needless courtroom action. It would be better to set out, in very strict language, what the entitlement criteria are and have the board determine these cases.

**The appeals tribunal, sections 117 and 118:** The appeals process needs reform. The method set out in Bill 99 is not appropriate as it curtails the policy audit function of the board, for which we believe there is a need. We agree the board should have control over the entire matter of the making of policy. We suggest that where a decision of the tribunal turns upon an interpretation of policy and general law, and the tribunal is of the view that the present policy or the board's interpretation of the policy is incorrect, rather than have the tribunal apply what may be an incorrect or inappropriate policy, the tribunal must be required to bring the matter to the attention of the board of directors. The board would then be required to review the matter of policy and law within a certain time and advise the tribunal of the results of the review.

**Non-economic loss, sections 46 and 47:** The simplification of the NEL process is appreciated. The drafting error in subsection 46(2) regarding maximum and minimum payments — as it now reads, the minimum for even a 1% NEL would result in about a \$28,540 payment. It is also suggested that the prescribed time for reassessment be extended from 12 to 26 months.

**Special reserve fund, section 95:** The sickness and injury enhancement fund has had a very long and important history in workers' compensation in Ontario. Unfortunately, it has never been explicitly written into law, and we believe now is an appropriate time to do so.

With these amendments, we can support the passage of Bill 99. It is required to ensure the successful implementation of the new act. We believe the package can then meet the objectives mentioned earlier: affordable, sustain-

able and competitive. More money is not the answer, as it has been tried and failed. The best way is to ensure that injured workers have a system in place that will provide the assistance they need to ensure the passage of Bill 99.

**The Chair:** Thank you very much. We have just less three minutes for questions per caucus, beginning with Mr Patten.

**Mr Patten:** Thank you very much, Mr Meady, for your presentation. The test you suggest — affordable, sustainable and competitive — there's probably still a test for each one of those. What does "affordable" mean? "Sustainable" I understand, that the fund can maintain itself in terms of its programs and payouts and this kind of thing. I understand that one, but I have some questions around what "affordable," really means for you, and "competitive," when I don't know if there's any other program. Is it competitive with the private sector, with insurance companies? The WCB does more, I would think, than most insurance companies would in terms of its other functions, which are to support prevention, let's say, to support education in the workplace for safety, things of that nature. I wonder if you might elaborate on affordability and competitiveness.

**Mr Meady:** In regards to "competitive," whether there is a basis between the WCB or a private enterprise, I'm not sure there is any parallel you can draw. It does have to be competitive to — if you have a look in terms of whether other options are available, how many of those options, I couldn't give you that at this time.

In regards to being affordable, "affordable" has to be addressed in the respect that there has to be an ability to pay, for the employers themselves, for the system to be workable as well. Obviously, if it's not affordable, if they don't have the ability to pay into the system, the system won't work and the system won't be there for the workers themselves. That's really what I'm addressing in regards to the affordability of the program.

1120

**Mr Patten:** I agree. I always worry a little about the ability to pay, because there are very few employers, both in the public sector and the private sector, who say they really can afford to pay. I have trouble with that term, but I understand your particular intent.

In terms of the aspect of competitiveness, though, an idea came up, and I wondered if you would support it; that is, that while there are sectors that have various rates depending upon their accident levels or accident rates, a suggestion during these hearings was to focus on those sectors that would have an impact on the overall rate scheme of the fund itself. Would you agree with that?

**Mr Meady:** To focus on the individual groups that have a higher assessment rate or a higher probability rate?

**Mr Patten:** A higher accident rate.

**Mr Meady:** Focus in which way? I'm not sure.

**Mr Patten:** In terms of the nature of injuries, the safety of the workplace, essentially.



**Mr Meady:** I really don't have any comment in regard to that right now. I'm not exactly sure what you're getting at.

**Mr Christopherson:** I can only assume, sir, that you're unaware, to give you the benefit of the doubt, of how disrespectful and insulting the injured workers who are here today and from across this province would find your suggestion that Bill 99 represents fairness and equity to injured workers, certainly when you suggest that there ought to be a three-day waiting period. I mentioned to these injured workers this morning that that was raised yesterday in Sudbury, and I'm sure some of them thought I had to be mistaken, that it didn't happen. To suggest that injured workers ought to be penalized, as if they've done something wrong, when they're the injured victims in cases like this just boggles the mind, sir. I would ask you to reflect on just how disrespectful and damaging it is for injured workers to hear you talk that way about Bill 99.

In the short time we have — there were a lot of things you said that I'd like to talk about further, but I want to talk a bit about the unfunded liability and the fact that you still think there's a crisis there. I want to raise with you the fact that as a result of the changes we made when we were in government, the unfunded liability has now dropped, over the last three years, by over \$1 billion, that there is \$8 billion in assets that the WCB now has, that they've never borrowed a dime and their administrative costs have dropped dramatically. How anyone can call that a crisis I'll never know.

But just for the sake of argument, let's assume that somehow you could translate that into a crisis, that what I've just outlined is in reality a crisis. If that were the case, how in God's creation would you ever justify, in the light of a crisis like that, giving back employers \$6 billion of revenue, if the reason you're attacking injured workers is to deal with this crisis? That just leaves me cold. I have no idea how you can defend that, and I'd really appreciate hearing your thoughts.

**Mr Meady:** In regard to the unfunded liability and the drop of \$1 billion, the information I received suggests that the real reasons for the decline in the unfunded liability are better-than-expected investment income as a result of lower-than-expected inflation, and fewer accidents. But there is a fluctuation, if you look at it on a long-term or a larger scale, in regard to where the unfunded liability is in a longer-term period. If you look at the short-term period, yes, there is a decline of \$1 billion. But when you're dealing with \$11.5 billion or \$11.4 billion, yes, these particular factors contributed to that \$1-billion decline, but to say there's not a crisis, to say that's still not there, is just overlooking the entire unfunded liability problem as a whole.

**Mr Christopherson:** I would refute your causes of why. The fact of the matter is that those savings were projected in the changes we made when we were in government. That's why we made them. But we certainly didn't attack injured workers in the process of doing this

to the degree that your employer pals are getting \$6 billion. Again, you're coming back to the fact that you still think there's a crisis. If there is — and I don't think so — how do you justify giving back \$6 billion of revenue at a time you claim there's a crisis?

**Mr Meady:** I'm not looking at defending the position of giving back \$6 billion in regard to the employers' position, because I wasn't speaking in regard to that particular issue.

**Mr Christopherson:** But that's part and parcel of all this.

**Mr Meady:** It could be part and parcel, but I'll only comment on exactly what I've been speaking about myself. I'm not prepared to comment on something about the entire policy. I'm giving my comments in terms of what I think are the positive aspects of this act, what I think can be contributed in terms of changing policies in this act and how I think it could better enhance the system as a whole. In regard to the entire policy or the entire bill itself, I think that's best left between you and the people across the table from you.

**Mr Christopherson:** I would say you feel that way because you're on the winning side of this deal. There are real winners and real losers, and you're winning and they're losing.

**Mr Hastings:** Mr Meady, thank you for coming in. Maybe you could elucidate a little more. The 1995 annual report of the WCB clearly indicates, contrary to Mr Christopherson, who likes to leave misleading impressions or leave out half the story, that the unfunded liability is the difference between what would be owed if you had to pay up everything as of a certain midnight date, all outstanding obligations under the act to injured workers — he talks about being very insulting. It's insulting to injured workers and rehabilitated workers that you get half the story. There's no crisis here, according to them.

According to the WCB report, if you look at the actual audited statement, the unfunded liability right now, as of 1995 — it's down a little — is \$18.1 billion. The assets Mr Christopherson talks about are \$8 billion. He alludes to that and attributes it to excellent management while they were in power, but again selectively ignores that part of the good management is the performance of the investment of that \$8 billion in assets in US and Canadian equities and bonds.

The other side of the story is that \$10.8 billion is owed. This is like a credit card arrangement. According to the previous regime, there's no problem if you owe the money.

**Mr Christopherson:** Who owes it?

**Mr Hastings:** The money is owed by everybody who is a consumer in this province, whether they're an employer, a chiropractor or what have you. What I would like to find out from you —

*Interruption.*

**Mr Hastings:** Do I have the floor or don't I?

**The Chair:** You have the floor, Mr Hastings.

**Mr Hastings:** Thank you, Madam Chair.

To say there is no crisis — Mr Meady, I would like for you to put in human terms what it really means if we do not address this unfunded liability, so casually dismissed by the opposition as, "Oh, it hardly exists"; what it really means to people who could be injured in the future and people who are already receiving benefits, in terms of the financial sustenance of the whole damn program.

**Mr Meady:** Obviously, if the unfunded liability is the difference between the assets and what we have to pay out, if there is not enough money there if all the payouts had to be there — it's simply if you have the debts and don't have the money to pay for it, due to the contributions thereof. Other than that, I don't know how to put it in layman's terms.

**Mr Hastings:** In other words, it would translate into jeopardizing —

**Mr Meady:** The entire program.

**Mr Hastings:** Future injured workers, rehabilitated and existing ones, right?

**Mr Meady:** Absolutely.

**Mr Hastings:** But they want to ignore that. That's why we have the problem.

**The Chair:** Time has expired. Mr Meady, thank you very much for taking the time to come before us this morning. We appreciate it.

1130

#### THUNDER BAY AND DISTRICT INJURED WORKERS SUPPORT GROUP

**The Chair:** I'd like to now call upon representatives from the Thunder Bay and District Injured Workers Support Group. I believe it's Mr Eugene Lefrançois. Sir, welcome.

**Mr Eugene Lefrançois:** There's something funny I heard this morning about the unfunded liability. The employers are all paying into pension plans. If all the employers had to put up all the money owed by the pensions — this has nothing to do with the WCB; this is pension plans paid by the employer and the worker. They go into a big fund, like the secondary schools and all those big funds. Could the employer of all those pensions pay up tomorrow on all the money owing, predicted for how long their members are going to live? Can they do that right now? Do they have the money in the bank? I don't think so.

My name is Eugene Lefrançois, and I am a trustee for the Thunder Bay and District Injured Workers Support Group. You've all got a copy of our presentation. I can sit here and read it all, but I don't want to do that. If it's all right with everybody, I would like to perform a role-playing skit. This will address all the issues we've heard today plus maybe bring in a few others. It is our time. Is it the Chair's thing that we could do this, have a role-playing skit?

**The Chair:** No, we're expecting a presentation.

**Mr Lefrançois:** This is the presentation.

**The Chair:** The problem is, it won't be picked up on Hansard. There will be no record.

**Mr Lefrançois:** It's for your benefit. It's not for the microphone; it's for your benefit. If you've got questions afterwards on what you pick up, please. These guys are pretty loud. You'll hear them.

**The Chair:** Will you be seated at the table?

**Mr Lefrançois:** I think they could be seated at the table, or we could do it right beside the microphones.

**The Chair:** It would be easier for us if you could sit down; we could hear it a little better.

**Mr Lefrançois:** Okay. Can you light up all three mikes?

**The Chair:** Yes.

**Mr Lefrançois:** Okay, guys, we're on.

Our president couldn't be here today. He had a stroke this spring — he is 43 years old — and he's working 12 hours a day doing something that's going to kill him. Why is he doing that? Because the WCB does not pay enough.

I can tell you that at the beginning of this year my pension went up 65 cents. Last month's cheque went down \$60. Something's wrong. I'm serious. You guys are all getting paid good money. I've got a family of four dependants, plus myself. I get \$595 a month. I am one of the people Steve talked about, the 70% of people who are not going to work. I am one of them. You are seeing someone who has not gone back to work since he got injured, properly making his money.

The skit will be about an injured worker under the proposed Bill 99, how we see it's going to happen. When the last bill went through we did skits, and we pretty well hit it on the head, 99%.

**Mr Muntz:** This is really heavy.

**The Employer:** Come on, get that over here. What's the matter with you?

**Mr Muntz:** I hurt my back.

**The Employer:** Oh, hurt your back. Come on. Pick it up. What's the matter with you?

**Mr Muntz:** I'm hurt.

**The Employer:** You're going to cost me money now. How many times have I told you in the past? Now I'm going to have to call the KGB and tell them to get over here, that I've got another accident.

**KGB Services:** Hello?

**Mr Employer:** We've got another one.

**KGB Services:** It's going to cost you money. You're in trouble. I'll come over, but you've got to pay me.

**The Employer:** [To Mr Muntz] You see what you've caused me now? You see what you do? How many times do I have to tell you that you've got to be careful when you work? My God, what am I going to do? Now look at the money I'm paying. I have compensation insurance, but what am I going to do?

**KGB Services:** You've got to buy insurance too.

**The Employer:** This guy just keeps taking my money. It's coming off all the employees. You realize that.



*Mr Muntz:* I asked you to accommodate the job.

*The Employer:* Accommodate? I've accommodated you so many times. You see what's going on here now? Look at the money I have left. This is what compensation does to you.

*KGB Services:* One client; I've got another one in half an hour.

*The Employer:* You see that? Being an employer, that's what I have to go through. Every day it's the same thing.

*KGB Services:* You know you have to give him those forms, but remember, he has to bring them back to you. If he doesn't fill them out right, don't send them in, because he didn't do his job right. Remember, he's got to fill the box in just at the right spot.

*Mr Lefrançois:* That was scene 1. That was the initial injury and what we see what some employers will do to their workers. They will abuse them. They will not give them the forms. They will say, "You're slacking, you're malingering, you're just doing this because you want to have a vacation."

We can see this is going to happen and is going to be a problem. I think it's going to be a problem for everybody, not just the worker but also the employer. If you noticed, that employer had a big stack of cash before he started, but when he had to hire the guy to do his services, it came down; he only had one bill left. Employers, this is going to happen.

Scene 2 is when a WCB-appointed doctor named Dr Ross — the injured worker's name is Mr Muntz, and he will give Dr Ross a thing of medical intervention. This is what we see medical intervention is going to look like.

*Dr Ross:* Hello, Mr Muntz. My name is Dr Ross. I've come to talk to you about your opportunities and exactly what we're going to do with you under the new Bill 99, WCB act.

*Mr Muntz:* I definitely need your help, doctor.

*Dr Ross:* And we're here to give it to you. You have to learn to trust us, because our interests are for the board and for the employers, and you fall right into that category somewhere.

*Madge Crabitz:* We spend tax money doing this, you know. We spend tax money and you guys are just soaking it up. You're a bunch of fakes.

*Dr Ross:* Under Bill 99, there's medical intervention, when we can save money for the board and for the employers. It's very exciting. You're going to be very happy with this, trust me. There's only a 10% chance of success, so the odds are very good that you're going to be all right. We should have you back to work in six months. We're going to have you off benefits in six months regardless, because obviously my job is to save the board and the employers money, but we're looking after your best interests. Trust me on this.

*Mr Muntz:* You said 10% success. That was 10% failure, right? You made a mistake, did you?

*Dr Ross:* No, no. It's 10% success, but you've got to understand, I have to save the board and the employers money. There is no other way around it. You could get a second opinion if you don't trust my opinion, although I come very highly recommended.

*Mr Muntz:* I'm going to.

*Dr Ross:* Well, that's not a problem. I have a roster of doctors here who are all approved by the WCB. I've interviewed them all, and they will always just parrot what I say.

*Mr Muntz:* What does my future hold for me, Dr Ross?

*Dr Ross:* As I say, you're going to be off benefits and you're going to be out of the board's hair in six months. It's going to be great.

*Mr Muntz:* I'll be back to work?

*Dr Ross:* No problem at all. Just before I came in, in the hall you gave me your medical file. That thing's too bulky to read. I had your medical file some place. It's quite an extensive one. Just a minute; I'll dig it out. There it is, everything that I need to know about you. I see you're missing a limb. You know, this could have had something to do with your back injury. When you ripped your arm off, you obviously caused this injury to happen. The only way you're going to be successful is to take the operation, hell or high water. Thank you very much.

#### 1140

*Mr Lefrançois:* The next scene of this skit is that the operation — that 10%? Well, it was not a success. An injured worker advocate now comes in on behalf of the injured worker. He works with the injured worker. By the way, the injured worker advocate is from our group, just to give him a plug. You know something? This next character reminds me of a woman called Evelyn Dodds. If anybody knows her, she really reminds me of Evelyn Dodds.

*Madge Crabitz:* I know this guy. I've seen him working hard. I'd like you to see the pictures I've got of this guy.

*Mr Lefrançois:* The next scene we move into is that the worker advocate will come in with the injured worker.

*Injured Worker Advocate:* I've got your file here. I see that the operation was not a success.

*Mr Muntz:* You can say that again.

*Injured Worker Advocate:* I've heard that you're a paraplegic now.

*Mr Muntz:* I used to have three limbs. Now, none of them work.

*Injured Worker Advocate:* Now I have some more bad news for you. As your family has split up, you've lost your house. The WCB has been sending your letters to the wrong address, your hearings have been bypassed, and

now we're going to have to arrange with Dr Ross to talk about an appeal at WCAT.

*Mr Muntz:* Not Dr Ross again.

*Injured Worker Advocate:* Yes, I'm afraid so, Dr Ross.

*Mr Muntz:* Please, can't you stay with me and help me?

*Injured Worker Advocate:* Yes, I will.

*Dr Ross:* Hello, I'm Dr Ross. And you are?

*Injured Worker Advocate:* I'm Ken Smith.

*Dr Ross:* Glad to meet you, Ken. Glad to see that you're recovering so well, Mr Muntz. Just let me get a chair over here so we can be all friendly-like. Why did you call me in? I don't really understand, but I'm here to help. That's my sole interest in this.

*Injured Worker Advocate:* This man's hearings have been bypassed because the board has been sending the letters to the wrong address.

*Dr Ross:* Ah, but they were sending the letters. You must give them credit for that.

*Injured Worker Advocate:* We would like to talk to you about bringing this to WCAT on an appeal.

*Dr Ross:* Not a problem. We've got a wonderful appeal system under Bill 99. It's going to work out really well. You put your appeal in, and no matter what they say, we'll deny it. That's the way the system works now. They only have to follow policy, and I set policy.

*Injured Worker Advocate:* Well, I see we will then have to proceed and get together a class action and go to the Supreme Court with it.

*Dr Ross:* Well, you have to do what you have to do.

*Mr Muntz:* Let's get that Dr Ross.

*Injured Worker Advocate:* We will.

**Mr Lefrançois:** That was how we perceived it will work. We really hope we do not have to do this. But we can only decide that it's going to have to go to this. You guys have left us absolutely no choice.

By the way, have you got the number for the snitch line?

**The Chair:** Are you finished with your presentation? Are you ready to go to question period?

**Mr Lefrançois:** No, I've got one more part of the presentation.

**The Chair:** Why don't you finish your presentation first.

**Mr Lefrançois:** The whole WCB system is based on the Meredith report. All through Bill 99 you have changed the word "compensation" to "insurance." I pay auto insurance, home insurance, fire insurance. If I pay that insurance and don't use it, no accidents or anything, it would be nice if the insurance company would give me money back. I really would like that. Probably everybody in this room would like that, that if they don't have an accident they get a rebate on their auto insurance. Of course that doesn't happen, but for some reason, the WCB gives employers money back if they don't have an accident. Domtar, for instance — we know this is a fact — has injured workers counting pencils, counting maps, colouring maps, just so

they don't lose the rebate. This is cruel. This is unfair. This is your Bill 99.

Right now, Bill 99 is just a thought in somebody's head. The WCB right now is using policy from Bill 99. They're implementing it now. That's illegal. Given that that's illegal, will the next scene's players come up, please? As a little preamble to the scene, here's what happened. The Thunder Bay and District Injured Workers Support Group filed a class action lawsuit against the MPPs, the current government and every person who supported this bill. We filed against everybody. I'll leave you their decision.

*Judge 1:* A just compensation law ought to provide that the compensation should continue to be paid as long as the disability caused by the accident lasts, and the amount of compensation should have relation to the earning power of the injured worker.

*Judge 2:* Employers will be held personally liable for murdering their workers, and employers who have only injured their workers will face charges of criminal negligence causing bodily harm. Also, until this WCB legislation is changed, workers who get injured on the job will be able to sue their accident employers regardless of who is at fault, retroactively since the current government got elected.

*Judge 1:* It is the decision, by a unanimous vote, that this session of the Supreme Court render in favour of Mr Muntz and all injured workers, past, present and future. All injured workers have complete compensation coverage such as they have had in the past or can fall back on the right to sue the employer. This session of the Supreme Court is now adjourned.

**Mr Lefrançois:** In a nutshell, that's how we see the proposed Bill 99 will work for the injured workers and what you are going to force all of us advocates to go after. We have tried talking to you. We have tried pleading with you. You have taken away all the rules. You have changed all the rules. It's not fair for any one of us. Employers don't like this bill. Workers don't like this bill. If you talk to anybody out there in the social field — it doesn't have to be labour — they do not like this bill. It's like the bill where you killed welfare. For most workers injured under Bill 99, you can guarantee they're going to be on welfare in roughly — the max we could see is 18 months from initial injury. They're going to be on welfare if they cannot go back to work.

Any questions? Do you want the names of all the players?

**The Chair:** That would be useful. There actually isn't time for questions, but if you'd like to read out the names of the participants, that would be helpful.

**Mr Lefrançois:** Ross Singleton played Dr Ross; Bonnie Cameron played the judge; Dale Gorrell played the employer; Robert Guillet played a judge; Ken Kawchuk played a judge; Steve Mantis played Mr Muntz; Eugene



Lefrançois is me; Francis Bell played KGB Enterprises; and Muriel Poster played Madge Crabitz, also known as Evelyn Dodds.

**The Chair:** The time has expired. Thank you very much.

### ROSS SINGLETON

**The Chair:** I now call Mr Singleton to come forward for a presentation.

**Mr Ross Singleton:** Actually, it would be a hell of a lot better if I could be Dr Ross and assess all of you, and then we'd really have something to talk about on Bill 99, but I don't think you're going to give me that opportunity.

I don't have anything particularly prepared. I have some notes. I'll probably be all over the place.

**Mr Hastings:** You wouldn't make a very good doctor.

**Mr Singleton:** I wouldn't, eh? That was interesting. Of course, we know which side of the table you're sitting on.

My name is Ross Singleton. I'm here as an injured worker. I am a member of the Thunder Bay and District Injured Workers Support Group. I am a member of the Ontario network as a vice-president, but I am here as an injured worker. I've got to ask you, why are we here? We're obviously not here to listen to injured workers, because it doesn't make a bit of difference to most of the people sitting around the table. We don't want to listen to the injured workers pushing the agenda of big business and the insurance industry. The new name obviously gives you that tie-in there. We're not here to pursue health and safety. We had the Occupational Health and Safety Act, but that's been all changed.

So why are we really here? It appears to me that we're just here to go through the motions, to say this is a democratic process and everybody had a chance to say something, but I've got one word for that and, excuse me, it's bullshit.

1150

Cam Jackson came to Thunder Bay a few years ago. His first agenda I think clearly indicates the direction they want to see WCB go in in Ontario.

Perhaps the so-called crisis created by the government has given rise that there have to be changes to the WCB, but obviously, from where I'm sitting, some of that may or may not be truthful or factual. It's clear that the report from Cam Jackson that was left over from the old PLMAC committee started under the NDP has finally triumphed. The board's been restructured, rebates are up to employers, assessments are down to employers, benefits are down to injured workers, and heaven help us, the unfunded liability is certainly under control. It doesn't matter how many billions they have in assets, it's obviously out of control.

Cam Jackson, though, was probably a lot like some of the people sitting at this table: little knowledge but good intentions. He was at this hearing in Thunder Bay a number of years back and he came out with a statement that he knew what an injury was about. He's sitting at a table

with injured worker representatives from various factions in northwestern Ontario, not just from Thunder Bay. He had an "injury." One of the points in the Jackson report, and of course it's been watered down a little bit but still there, is the soft-tissue injury. Oh, Cam had got an injury. He was one of the boys or girls sitting at the table. He got it playing squash — playing, not working. He got it playing squash and he sits there in front of a police officer who got shot in the line of duty, who has to blow through a tube to manipulate his wheelchair, and says, "I understand what an injury is all about." Again, bullshit.

You people do not understand what it's like to have an injury in a workplace. If you're fortunate enough to come from a working class background and worked in your life, you may have an understanding, but some of you have forgot, terribly forgot what it's like. You have no idea of the stress and what happens to families once you have a permanent injury that will not go away. A soft-tissue injury playing squash, yes, good, a couple of weeks and I'm better. Twenty years wearing a back brace doesn't make it any better. Every morning I get up, take two pills and go to work, and I'm fortunate because I am one of the very few who got back to work. I have a tendency to feel that perhaps my words are falling on deaf ears.

I've got a question. The skit kind of related to it. How long is it going to be before injured workers are going to have to get tattoos, where we go around and have to be part of experimental operations under the guise of saving the board or saving employers money? It's happening. This happened back in the Second World War. Certainly not to imply that the good members of Ontario have anything to do with the National Socialist Party out of Germany, but I tell you, when you are going to introduce legislation that allows the board to save money to do surgery that could be "experimental," I'm waiting to get my tattoo put on my arm so I'll be able to be identified very easily.

How long is it going to be before injured workers are classed as criminals, where we have it on our permanent record, where we go to our social insurance number and find that, lo and behold, I'm an injured worker and I can't get credit, I can't do this, because I've sucked money out of some fallible or fallacy type of arrangement that we have to be in?

Injured workers aren't the problem. I've been a member of the Thunder Bay and District Injured Workers Support Group since 1985 or 1986. I got hurt back in the 1970s. Bill 99 is not going to solve the problem. What it will do is turn Ontario into the 51st state, as we go down the road to privatization. It's being pushed clearly by the insurance industry's interest.

Cam Jackson was clear on that. He didn't like it when I told him that I'm sick and tired — and I am, and I say it to you people — of being told by an industry what is wrong with the bloody system and they don't pay into it. They have no right to be at the table. Yet now what do we call compensation in Ontario? Insurance. I wonder why. Talk about having the cart before the horse.

We told the Liberals when they passed Bill 162 back in 1990, NELs and FELs aren't the answer. Rehabilitation is the answer. Get people back to work. If you'd quit worrying about the God-damned dimes, the dollars will take care of themselves. Get people back to work. People are productive.

We told them then it wouldn't work. I tell you now, Bill 99's not going to work. That's why since 1990 we have had, as was mentioned before by other speakers, almost a 70%-plus unemployment rate with injured workers who have a permanent disability. Bill 99 will only work for the insurance industry and big employers, but will cause financial hardship to small businesses. Consultants will become rich. Small businesses will pay. The taxpayers will pick up the difference, providing that the poor injured worker can get on welfare to cover the difference.

Bill 99 was not written to help injured workers and employers, but to pave the road to privatization. The principles of compensation haven't changed very much. I'd like to just read — if I can find it of course. This is from the original act. This is what compensation is supposed to be. This is what you people are changing. "An Act to provide for Compensation to Workmen" — unfortunately this was written in 1914, so bear with the inadequacies of the female gender — "for Injuries sustained in Industrial Diseases contracted in the course of their Employment." It's a very simple definition.

I'd also like to read to you from a little thing. This is a first aid regulation dated April 1962, one of these things that just falls into people's hands, it was in some chest someplace, and I quote: "The Workmen's Compensation Board: that the administration of the act should always be in keeping with the motto, 'Justice humanely and speedily rendered.'" Bill 99 totally destroys that concept. If it was good enough in 1962, sure things change economically, but principles do not change.

Short-term thinking has bent the principles to the point of being back before the act was introduced by Meredith in 1914. Ontario is indeed open for business, but what I'm doing is urging all workers to take it easy — hide it, dog it. I could use other words. Milk the sick time system. Do anything but get bloody hurt in Ontario because if you get hurt, you're not going to be adequately protected any more.

The skit touched base on it, and this is only my opinion, not the opinion of the group. It is the opinion of Ross Singleton only, so be very clear on that. I can only hope and dream that legal action will be taken to tie up the board's assets, as they are mine and other injured workers'. They are not the board's, the insurance industry's or the government's.

You're going to hear many speak out on the bill, some for, some against. Injured workers for a long time have stressed that we are not part of the problem, we are part of the solution. It's always fallen on deaf ears. We've approached a number of businesses in Thunder Bay, the chamber of commerce, but all we got was what I call the

"yeah, yeah" answers, all talk, no action. Remember that when you hear from some of these people this afternoon. We went to the table. We went to discuss. We understand there's a crisis. We understand what needs to be done to protect injured workers, to ensure that employers can have enough money to keep in business so that we can be competitive in the world marketplace. What do we get? Thanks, but no thanks. That's Thunder Bay. I guess the government's going to go on with the hearings. We'll say we heard from everybody, but thanks, but no thanks.

One of the things that concerns me the most is that under the way the system works, old act, pre-1990 injured workers have had enough. Back then we never got the rehabilitation. Where were you people then? What we got was bought off, given permanent pensions. Now suddenly it would appear that we seem to be the problem. People 50 years old, people part of the baby boom. Demographics have not been studied at all in this legislation. The unfunded liability seems to be driven by the baby-boomers, by those injured workers who were hurt before 1990, with their permanent pensions. Maybe it's been just too bad that people don't say that out, but that's what the bottom line is. I've been around enough; I've moved with the people who obviously sit in opposition to some of the people who sit at this table. We know what's going on there; we know what's being said.

It's my opinion that if you're going to continue to bastardize the compensation system as it was first set out by Meredith, you had better start thinking of two things: (1) legal action; (2) getting rid of the older workers by buying them out, and not at some reduced debit table, fancy sleight of hand, but at a reasonable and fair settlement.

1200

**Mr Christopherson:** Mr Singleton, that's an excellent presentation. Thank you for all the compassion you bring to this. I certainly don't want to appear trite, but you may have missed your calling. You're a great actor too. I thought you did a superb job there, and I think enough people feel that way that I'm safe in mentioning that in my response to your comments.

I'm going to tie what you said with the skit, because that seems to have been your intent, to take the messages that came out of the skit and try and translate them into a presentation. I can only hope the government members are beginning to understand that two things are happening in these hearings. One is we're having presentations where we're getting detailed analysis of the impact on injured workers, detail by detail. Then in other presentations, as we saw with this skit, we're getting the overall impact on how this is going to affect workers' lives and how it scares the hell out of them in terms of what the future holds.

At the end of the day, there's just no way this government will be able to justify it. Each of you as a member of this Legislature is not going to be able to go back to your constituencies and justify what you're doing to injured workers. I can only hope that somehow at the end of these hearings, as limited as they are, you understand that, that



you can't go across the province attacking injured workers like we have here in Thunder Bay and in Sudbury and all the other communities we're going to and expect that people aren't going to retaliate.

I want to mention —

**The Chair:** Mr Christopherson, there's about 30 seconds left. Very briefly, please.

**Mr Christopherson:** There's never enough time. I want to thank — this is my one opportunity because there wasn't one after the skit — all those who presented in the skit. I'm glad, Chair, that you allowed it, because it's important that we have different kinds of presentations, that they be allowed. That's the kind of stuff that matters. We've got to get the message out about what this is going to do to injured workers. God help any able-bodied workers who think this doesn't matter to them, because they, as you often say, are one injury and one day away from being an injured worker themselves, and they need to pay attention to this issue.

**Mr Maves:** Thank you for your presentation. You were discussing Mr Jackson's visit up to Thunder Bay with injured workers.

**Mr Singleton:** Could you speak up, please? I can't hear you.

**Mr Maves:** Sure. You talked briefly in your remarks about a lot of things. I only have time to touch on one. You talked about health care and surgeries, and I just wanted to point out that's a redraft of what exists in the current bill.

You expressed concern about employers paying premiums they owe. You said you went to see the chamber of commerce and said, "We understand there's a crisis, we understand the need to be competitive," and so on and so forth. Going back to collecting what employers owe, I wonder how you feel about the new powers given to the board to better collect owed premiums.

**Mr Singleton:** I guess this comes as what seems to be the crisis that is developing about the interpretation of what people say, because I did not talk about that. However, to address your point, the powers you've got don't mean shit because they're still running \$200-million-plus a year back that they write off.

**Mr Maves:** That's because they're new powers starting in —

**Mr Singleton:** Your powers haven't done anything.

**Mr Maves:** That's because they're not enacted yet.

**Mr Singleton:** The point is, you've been in power. You wanted to do something to change the board. Don't come here in front of me now and say, "We've got all wonderful new powers to do it." You could have done that before. These are people who do not pay their responsibility. They take it out so I've got to wear a bloody brace for 20 years, and then you have the audacity to say, "We've got sweeping new powers, we're going to do that." You could have done that with the stroke of a pen in June.

**Mr Maves:** It's in Bill 99. I just wondered if you had —

**Mr Singleton:** Well, it was Bill 13 before that. Why wasn't it addressed in there?

**Mr Maves:** We increased the fines from 25 grand to 100 grand in —

**Mr Singleton:** You also increased fines to injured workers — material change.

**Mr Maves:** Employers have to report material change too.

**Mr Singleton:** I'm sorry?

**Mr Maves:** Employers have to report material change.

**Mr Singleton:** Unfortunately, at least with the people I run, we don't see employers getting dinged, we see injured workers getting dinged.

**Mr Maves:** I guess previous governments could have made the same adjustments that you wish us to make now, which we are making in 1999.

**Mr Singleton:** Don't misconstrue anything I said. Although I may have political support on some things, when it comes to WCB, they've all screwed up royally.

**Mr Maves:** So you don't have any opinion on the changes on collecting debts?

**Mr Singleton:** I cannot hear you. I know I'm speaking clearly.

**Mr Maves:** You have no opinion on the new powers given to the WCB to collect premiums?

**Mr Singleton:** In a sense, when I see some action, I will give you an opinion, but words mean nothing.

**Mr Maves:** Great, thank you.

**Mr Gravelle:** Thanks very much, Ross, for that presentation. It was very passionate. I think the whole morning has been really extraordinary in terms of the energy of all the presentations. The skits were great. It's a great way to portray what people fear is happening.

You hit the nail on the head in so many ways. The part that has bothered me from the very beginning, and I know it's bothered you, is this whole false process of consultation. I remember when Cam Jackson was here, and I can't remember whether it was a year ago or whatever, and I remember that the injured workers organized an evening meeting, a public meeting, which he would not attend. What he would do is he would only sit down in a room with three or four — Ross, you were there and I don't know who else was there, and he wouldn't do it. The truth is that if real consultation was taking place — and I guess that's what bothers me the most about this government. They will say, "We've consulted." They'll say, "Here's what we're going to do and then we'll consult." It's a classic pattern. Because if they really were consulted, the Occupational Disease Panel wouldn't be eliminated, if there was real consultation, because then they would learn it was wrong. WCAT wouldn't be turned into something that no longer has any real effect, and as Dr Ross you made that point very well.

I really do think that the biggest flaw in the system is that this is something they want to do, consultation is not real, and yet they want to still walk out the door and say

they've consulted. I think that is what makes this the biggest farce of all. Anyway, thanks very much.

**The Chair:** With that, we'll recess. We appreciate your taking the time to come before us today. We'll reconvene at 1:30 in this room.

*The committee recessed from 1207 to 1333.*

## DISABLED WORKERS' COMPLEX CASE NETWORK

**The Chair:** Good afternoon, everyone. Our first presenters this afternoon are representing the Disabled Workers' Complex Case Network, Mr Sanderson. Would you like to introduce your colleague, please. Welcome.

**Mr Darrell Sanderson:** I'm Mr Sanderson with the Disabled Workers' Complex Case Network. With me I have Mr Ron Ross, who does disabled consulting in Thunder Bay and northwestern Ontario.

Before I begin, please bear with me. I'm chewing gum. I have a cold, so it's difficult for me to speak.

I sat through the proceedings this morning. Some items were mentioned that are quite obviously of large concern to injured workers in all communities. There is the case of the unfunded liability and some of the concerns Mr Hastings expressed about that. I would just like this particular committee to know that I too have a large unfunded liability as I live each and every day in this community and wend my way through life. I think it's important to note that essentially my income is basically half of what I would be earning today if I were still in the employ of my employer.

I guess I have to say I support the injured workers in terms of the unfunded liability, the issue of assets. To me it's not a big issue; it's just a big smokescreen in regard to why this system needs reform.

This system needs to be looked at. Legislators need to take a hard look at it and get the political will to make changes that are going to be beneficial to all.

With that, I'll proceed. I've provided some material as best I could. I know you are looking for 30 copies. I make reference to my organization's submissions to the Royal Commission on Workers' Compensation in 1995. I also make reference to a number of documents I have here that individual members are not all privy to. Most certainly they are available and you can make copies if you wish. Much of the communiqué is in regard to communication between my organization and the complex case unit, injuries and disease, which some of you may know is now located out at Downsview, Ontario. They have now chosen to add some wording in terms of title. They call it the special injuries program.

With that, I'm going to turn to the document I know all members do have. It's the presentation to the standing committee on resources development by my organization. I'll start with the introduction.

I thank you, Madam Chair, for the opportunity to speak this afternoon on behalf of the Disabled Workers' Complex Case Network, DWCCN, on issues concerning a

specific segment of injured workers, more specifically, severely disabled workers with special needs. In order to use this opportunity and time efficiently, I won't be going into a great deal of history regarding our organization.

Our organization's history is documented in our previous submissions to the Royal Commission on Workers' Compensation and dated April 1995. The submission is also available within the Workers' Compensation Board library, as is a former submission we made to the Chairman's Task Force on Service Delivery and Vocational Rehabilitation in 1992.

Both presentations covered many compensation issues and I encourage your reading of the materials that were submitted to the royal commission in 1995 as I do not intend to repeat myself regarding those issues. As a small gesture and because of limited funding, I can provide you with five copies that I have here with me and I trust that you will make the required copies for your members. Also, I'm sure we can get you more copies on a fee-for-service basis.

The Disabled Workers' Complex Case Network actively identifies issues that affect permanently impaired workers with special needs. The makeup of injured workers receiving specialized rehabilitation services throughout Ontario consists of spinal cord injuries, paraplegics, quadriplegics, major amputations, multiple injuries, industrial blindness, severe head injuries, haemiplegics, severe burns, psycho-traumatic psychiatric disabilities and complex disability claims.

In Ontario the WCB estimates, in 1992 figures, that there is a total of 2,018 100% pensioners, plus 156 residing in other provinces and 62 residing in other countries, for a total of 2,236. The complex case unit, injuries and disease section, previously located at 2 Bloor is now located in Downsview and operates the special injuries program which provides specialized services to people with severe injuries. Because the CCUID also provides specialized services to individuals with permanent impairment awards that are rated at less than 100%, the overall number of clientele that the CCUID provides specialized services to is assumed to be much greater than the aggregate amount of 2,236 clientele.

According to the CCUID, there are approximately 200 plus permanently impaired consumers being provided and/or entitled to specialized services in the Thunder Bay region, which stretches from Blind River near Sault Ste Marie to the Manitoba border. DWCCN's membership base consists primarily of permanently disabled consumers in Thunder Bay and throughout northwestern Ontario.

While I know this committee will be hearing from a number of interested parties relative to Bill 99, I only wish to acknowledge a couple of concerns at this time regarding that bill.

First, subsection 34(1), part IV, "Health Care," speaks to the duty to cooperate. It states, "A worker who claims



benefits under the insurance plan shall cooperate in such health care measures as the board considers appropriate."

Subsection 34(2) talks about the failure to comply with subsection (1) and the possible reduction or suspension of payments to the worker under the insurance plan while the non-compliance continues.

Our organization is concerned that this may mean people with very serious injuries may be coerced into treatments they believe detrimental to their health. What protection will be available to someone who has already suffered a serious workplace injury and does not wish further medical intervention? Will subsection 34(1) also apply to old claims prior to Bill 99? We believe these questions should be given due consideration so that people are not forced into accepting medical treatment against their wishes.

Second, Bill 99 is a complete rewrite and yet maintains the dual award system as conceived and contemplated by Professor Weiler and as implemented over the past decade. Unfortunately, this means the deeming aspect of the present workers' compensation legislation is continued and in effect for all those suffering a workplace injury and residual impairment. For people with severe disability, and in fact for all injured workers, the deeming aspect is repugnant as it really does not take into account the realities and barriers regarding rehabilitation, socioeconomic and daily independent living.

There is great potential for administrators to abuse the deeming process when dealing with the most marginalized within the workers' compensation system. Severely disabled workers who receive substantial NELs for pain and suffering are using these moneys to pay for their own disabilities. It adds insult to injury for these particular workers having to use those moneys that are for pain and suffering to pay for the needs of their disability.

1340

Severely disabled who are now within the system are telling us of the pressures placed upon them, knowing that at the end of any rehabilitative process is deeming. Once these workers finish school there will no doubt be provision for a short-term job search. However, at the end of the day we expect to see the seriously disabled become a casualty of the deeming process and all that it entails. This means they will have an education but no job. How will the system take into account the many socioeconomic problems regarding people with severe disabilities and the reality of the economy and job market? Will the severely disabled be applying for welfare when in fact they need a hand up and not a handout?

Our organization reiterates its tenet that some form of lifetime pension should be reconstituted within the system. Previous legislative changes in regard to reducing workers' compensation benefits by CPP disability have only served to jeopardize the financial wellbeing of the severely disabled.

The workers' compensation system has never accounted for the additional costs of living with a disability, yet

the system continues to find ways to implement cost-saving legislation and policies without really consulting with the people those changes will affect the most. Do we really need Bill 99, which is more like a wage replacement program than anything else? Is it really this government's intent to surreptitiously transfer costs associated with workers' compensation to the private sector and the insurance industry?

It is utterly amazing that Bill 99 will do away with soft-tissue injuries such as carpal tunnel when in fact the present system already provides entitlement to some injured workers for the very same thing. How can the board now say that repetitive type injuries are no longer covered or even debilitating to some individuals?

However, I digress. I wish to take your attention away from Bill 99 and ask what your government will do to bring in a legislative act that will address the issues of people with severe disabilities. What will your government do to help assist workers with the problems associated with the complex case unit special injury program? Our organization believes that government legislators are sheltered from the realities of the legislation they enact. Participation by legislators in standing resource committees is but a small part in reaching the average person and trying to understand what the average person's needs are. But then again we severely disabled are not average, are we? Severely disabled workers are injured workers with special needs. That I suppose is why we have a special injury program at the WCB.

We are enclosing a number of pieces of communication, five copies each, containing several letters. These pieces of communication are between our organization and the complex case unit managers and administrators. Our organization has been seeking a partnership with the WCB in regard to people with severe disabilities who are clients or consumers of the WCB system. Part of the enclosed documentation includes our proposal to the board for partnership. Our proposal is based upon the real merits a formal partnership has to offer: accountability and responsibility.

We respectfully ask that you review the enclosed documentation as it will give you a good idea as to the ongoing problems within the special injury program. We respectfully seek to resolve many of the serious problems that have developed regarding benefit and service provision to the seriously disabled community of injured workers.

For whatever reason, the special injury program is not meeting our needs. Entitlement and service issues are becoming a grave concern. Over time we have learned that if the injured worker does not ask for a specific benefit or service, then the injured worker does not receive the entitlements to the benefits or services as guided by legislation and board policy.

This means that most educated consumers will receive benefits and services they are entitled to while others less educated, such as the newly injured, have to fend for

themselves in figuring out their entitlements. Methods used by the complex case unit in granting and providing entitlements and services to the severely disabled are no longer acceptable. We refer to their tactics as "gate-keeping" and "non-disclosure".

Service provision to the seriously injured worker is provided by special needs consultants who are front-line workers. The WCB has once again centralized this service in southern Ontario and thus flies in a worker to service our needs. Our organization can cite situation upon situation where special needs consultants do not inform workers of their entitlements and benefits. Severely disabled consumers normally learn of specific entitlements by talking to their peers and others who are educated regarding the complex case unit.

If the special needs consultant and complex case unit is not responsible to educate the injured worker by openly informing them of their choices and options, and if the SNC is not there to help the injured worker prepare and obtain what is needed for that injured worker, then what is the purpose of having a special needs consultant and complex case unit? Why is it that what is said and put forth by the special needs consultant and the board is always one that provides for a bare minimum, instead of providing for a fair standard or provision in terms or benefits and services?

What are the criteria, guidelines and policies of the complex case unit in determining accessibility entitlements in situations where home and property have to be made wheelchair accessible? Why are injured workers being denied paving in the yard, concrete sidewalks for mobility, denied putting in windows, accessible cabinets in kitchens, changing the flooring materials etc? The list is endless. Why is the process by the special needs consultant a makeshift, piecemeal approach that disrupts and creates undue hardship and lengthy time delays in the provision of benefits and services?

We have not yet seen a front-line SNC worker conduct a formalized assessment of a severely injured worker's home. We have not yet seen a SNC conduct a written assessment with a newly injured worker on his or her vehicle and then provide vendors or suppliers with the detailed specifications to tender or quote on. What does a newly severely injured worker know about community resources at the onset of their injury?

Chronic injured workers are subjected to the same, ongoing treatment by the SNC, even though the workers have had some life experience regarding their severe disability and are now able to make wise choices and decisions relevant to their disability. If it is not the job of the special needs consultant to facilitate timely and effective provision of services and benefits, will the WCB complex case unit fund the worker to purchase service from locally based external professionals to facilitate the service in a timely and fair manner?

Our organization has witnessed situation upon situation where workers with severe disabilities are experiencing

long delays in accessing needed home modifications, vehicle conversions and other types of benefits and services. In some cases, severely disabled workers are kept in high-priced acute care hospitals or rehabilitation facilities for extended periods because the complex case unit will not provide for temporary measures to facilitate discharge back to the injured worker's home or other accessible rental housing.

It is not very appropriate, in fact it could be considered negligent, on the part of the WCB to delay processes for long periods of time, which result in the injured worker being restricted and confined within their homes because accessibility is not provided.

We can cite instances where injured workers have had to bum their way up and down stairs to get into their home; other instances where they are confined to one or two rooms within the main floor area without an accessible bathroom, kitchen, bedroom or other amenities to accommodate their disability.

If you will, imagine yourself being a severely disabled worker who has purchased a first-time home in the month of December, then imagine making a request to the WCB for the provision of accessibility to get in and out of your home; further imagine being told by the special needs consultant that you will have to wait for the spring thaw and the frost to leave the ground before accessibility can be provided. Now imagine the ensuing winter months as you bum your way up a flight of stairs covered with snow and ice. Please think about how you would feel. There is nothing dignified, safe or healthy about this scenario.

The board should be ashamed, yet it is their practice. Why is the board not prepared to do whatever it takes to facilitate temporary access as a short-term objective with permanent access as the long-term goal?

Severely disabled workers also experience similar problems with health care adjudicators when requesting health care products and services. I will not go into them here, but suffice it to say you will find mention of these in our submission to the royal commission and other documentation that we provide for you here today. Again, we respectfully ask that you review the materials to get a better picture of some of the problems associated with the CCUID and severely disabled workers.

I would now like to turn your attention to an ongoing problem that is quite serious in nature and apparently quite political. It involves the use of a specific type of gas tank on vehicle retrofits that were provided to some severely disabled workers by the board. I can you that I know of three in northwestern Ontario and I don't fully know the extent of the problem in the rest of the province.

**The Chair:** Excuse me, if I can just interrupt. You just have a minute left to finish.

**Mr Sanderson:** I have about a page and a half. Thank you. It involves the use of a specific type of gas tank on vehicle retrofits that were provided to some severely disabled workers by the board. Our understanding is that some vehicles were retrofitted with Transfer Flow gas



tanks that do not meet CMVS specifications set by Transport Canada. These tanks were imported from the United States and are installed behind the differential of the vans. The WCB has advised that Transport Canada considers vehicles equipped with these tanks as unsafe and, in fact, illegal.

The reasoning is that they do not meet standards and have never been crash-tested. Additionally, the door locks on some barn-door-style vans have also become an issue with Transport Canada. There is some indication that vehicles without locking mechanisms on the barn-style doors may also contravene the Ontario Highway Traffic Act. Further to this, it is our understanding that Transport Canada has also made note that the door locks are now an issue.

WCB has acknowledged the problem and has indicated to us that they will resolve the problems on our behalf. However, the issues regarding this type of retrofit have been ongoing since 1994 with no resolve. High-level administrative meetings were held with manufacturers regarding these retrofitted vehicles and, as a result, the WCB indicated that they would assist in resolving the problem with the gas tanks.

Only recently did we learn through a front-line special needs consultant that a replacement tank is not available. It was further indicated by the SNC that the board has been advised that the manufacturer of the purported replacement tank is not manufacturing a replacement tank at all. Thus, there seems to be no resolve to this problem.

**The Chair:** Excuse me. Can you wrap it up?

1350

**Mr Sanderson:** I've got a page.

**The Chair:** I'm not intending to —

**Mr Sanderson:** Okay. Our question is this: What will the board and/or this government do to resolve this problem for seriously disabled workers who are transporting their spouses and young families in these vehicles so equipped with the compromised gas tanks? Their wellbeing and lives are in danger each and every day as are the lives of others that may potentially rear-end a vehicle so equipped with this type of gas tank.

I could go on. Another issue is guide dogs. Why does the board ask charities to buy guide dogs for the blind, yet they pay for the veterinary supplies etc? Why not let the charities give to the charity that is needed? I will say this in summing up: Injured workers are not charities. Thank you.

**The Chair:** Thank you very much for your presentation. It's not to diminish anything that you wanted to present to the committee. It's just that in the interests of fairness, we try to keep our times close so that everyone has a fair amount of time to present. Thank you very much. We appreciate your taking the time to bring your material forward. I know when the clerk has copies for us, we will read it carefully.

**Mr O'Toole:** I would like to reassure the gentleman that I will be requesting that the committee look into that gas tank situation. I appreciate your presentation.

**Mr Sanderson:** There's some material that I'll leave here just in case you don't have a copy.

#### THUNDER BAY AND DISTRICT INJURED WORKERS SUPPORT GROUP

**The Chair:** Next is Muriel Poster, representing the Thunder Bay and District Injured Workers Support Group.

**Mrs Muriel Poster:** My area of interest is survivors' issues and my presentation is too short to be a brief. I started this letter when I didn't have standing, so I've modified it somewhat and I'm very glad to be able to present it to you here personally.

I'm a widow and I spend a great deal of time associating with the Injured Workers' Resource Centre here in Thunder Bay. Widows' and survivors' issues have become of special interest to me.

I presented a brief to the royal commission when it was sitting, detailing many of my concerns. Unfortunately, I didn't see any evidence that this material has been consulted when we had an opportunity to meet with Mr Cam Jackson; nor was there any mention of the information in the summary which was supposed to contain the essence of the royal commission gatherings.

No one has ever been able to answer the question, "Why is death a 40% disability?" and no one has addressed the fact that widows are expected to come to terms with their loss and make life-changing decisions within 12 months of losing their husbands.

I studied Bill 99 along with my colleagues and the only change I see is that benefit levels will now be based on 85% rather than 90% of the pre-accident earnings. This is certainly not a step forward. At a time when the whole world is coming apart, the survivor must cope with the loss of a loved one and also a dramatic reduction in income as well as the loss of medical and health care benefits and everything else that goes along with it.

I had hoped that a rewrite of the bill would take into consideration some of the factors that I've identified over the last few years. That doesn't appear to be the case. But I'd like to know what the true intent of this government is. Do you really want to show compassion and understanding for victims of our workplaces, or do you only want to be able to report that you've heard from widows and from injured workers?

Last year, a court case in British Columbia drew national attention when a group of widows in that province won a decision in the Supreme Court which changed their status. After having remarried before the Workers' Compensation Act was changed in that province, they were reinstated with their widows' benefits.

Earlier this year, in the early part of June, we had a meeting with Glen Wright here in Thunder Bay. When I talked to him about this issue in Ontario, he was under the impression that this problem had already been addressed

and taken care of in Ontario. They have been looking into it from his office. We have been in contact with a widow who's in a similar situation here in Thunder Bay. The Supreme Court of BC having decided in a court case that widows losing their benefits on remarriage is unconstitutional, there is a court case being launched in Alberta on the same grounds and also one now being started in New Brunswick.

You have here a chance to show that you really are concerned about the survivors and the injured workers in this province by making an amendment to Bill 99 to reinstate these widows who have been disfranchised and avoiding a long court case all the way to the Supreme Court. The precedent has been set in BC and I've been told both by Glen Wright's office and other legal people that this will stand up in this province.

It seems fiscally responsible to me to save the government money in the court case for the number of widows and the amount that would be paid out. It would be less than what it would cost you in court cases, especially when you would end up having to pay it anyway. As a gesture towards those of us who are injured workers in this province, it would show at least you're listening to something we have to say.

**The Chair:** You've left us with lots of time for questions. There's about four minutes per caucus. We'll begin with the government caucus.

**Mr Maves:** You said, "This week I have received word from Glen Wright's office that a similar case has been launched in New Brunswick." What else did Mr Wright have to say in his correspondence?

**Mrs Poster:** For which?

**Mr Maves:** You talked about your correspondence with Mr Wright. It says he knows about that case and that another case has been launched in New Brunswick. What else did he say about the issue?

**Mrs Poster:** The legal department of workers' compensation has granted that this situation is unconstitutional. Really, the situation is that widows who remarried prior to 1985 did not retain their benefits. The same widows who waited until after the bill was passed retained their benefits under the same legislation. So it's only the ones who weren't reinstated who are in an unconstitutional situation; it's discrimination.

**Mr Maves:** I understand that and I thank you, but did he have anything further to say other than acknowledging that?

**Mrs Poster:** That they are trying to find a way to rectify the situation and they would prefer to do it without having to go through the court system. It will require a law, because it was in legislation in Bill 101.

**Mr Maves:** I thank you for bringing it to my attention. I appreciate it.

**Mr Patten:** Thank you for your presentation, which is very interesting. By the way, have you been in touch with the Ontario Human Rights Commission?

**Mrs Poster:** Not as yet. There is an Ontario group of widows who are prepared to move forward on this issue with their own court case. I've sort of forestalled them because of the contact I had with one of these widows. We wrote to Mrs Witmer and she forwarded the information to Mr O'Keefe's office. Then we had the opportunity to meet with Glen Wright, so we've sort of addressed it from that end rather than proceeding right off with court.

**Mr Patten:** I would say it would be worthwhile, if you don't do it, that we can do it and ask for an opinion from the Human Rights Commission vis-à-vis the other two rulings — three now, I guess. The other way to do it is that we can ask by way of the review of the legislation.

1400

**Mrs Poster:** That's my suggestion. While you're putting Bill 99 through, this could be cleared up very quickly.

**Mr Patten:** That's right, because part of the responsibilities of the various commissions is in light of their particular mandate: what's compatible, what's out of whack, what's in line with the Human Rights Code, both provincially and federally, this kind of thing. We'd be happy to follow up on your behalf for that as well.

**Mrs Poster:** Thank you.

**Mr Gravelle:** I think this probably is a good opportunity for the committee. Because I'm not a regular sitting member of this committee, I probably shouldn't be assuming all kinds of things, but it seems to me that if, for the assurance of government members, there can be some information related to the court cases that have already gone through the system, and if it becomes clear that indeed this is going to be repeated in this province, it is an opportunity for the committee, with the other things being checked into, to put forward an amendment that would be a good thing to do and something that will also save some money in the long run.

**Mrs Poster:** The legal department at WCB has been doing some research on this already.

**Mr Gravelle:** Muriel, I just wanted to say that you were a great Evelyn Dodds, I thought.

**Mrs Poster:** That was Madge Crabitz. Madge has gone home.

**Mr Gravelle:** Oh, sorry. Muriel, I know you've been working long and hard with the injured workers' group for some time. There are a lot of parts of Bill 99 that I think a lot of us find pretty offensive. I appreciate that you have focused your time specifically on this issue, but I know you're an advocate in every sense of the word. Those of us, particularly in Thunder Bay, are very conscious of that. Is there anything else you want to have an opportunity to say on specific sections of the bill that particularly upset you?

**Mrs Poster:** I can't tell you how many people have asked me for a specific answer to that this week. Of course, there are a lot of issues. That's one reason I chose to pick this as a small issue rather than try to bring it in.

As I said, we presented to the royal commission, we presented to Cam Jackson. We've done all these things. If



people want to know where my feelings are and what it is, it's there. The brief is there with the royal commission information, yet nothing from my brief showed up in the summary that I read of that information.

**Mr Gravelle:** Well, you're an extraordinary advocate for the group.

**Mrs Poster:** If somebody else wants a copy of the brief, I've still got the original. It can be reproduced.

**Mr Gravelle:** Thanks very much.

**Mr Howard Hampton (Rainy River):** Muriel, you're not done yet. I have a very simple question to ask you. As I was reading the newspaper this morning, the newspaper was recounting that most employers in Ontario are doing very well. Profits are headed for record highs. I note that one of the chief impacts of this legislation will be to give employers a \$6-billion gift. That's what they get out of Bill 99: a \$6-billion gift.

Given that benefits are going to be cut from 90% to 85% and given that you probably know a lot of people who are widows and survivors, what do you think the impact of this bill will be upon the people you know? We know it will be very good for employers, but what do you think the impact will be upon survivors?

**Mrs Poster:** Certainly 40% disability — when someone dies, that's what a survivor gets. Everyone assumes it's 100% disability, and it's not. I've shocked a lot of people in the last five or six years with the revelation that it's only 40%, and this is just going to shrink it. A lot of us in this part of the country — my husband was a miner. He made more than what the WCB cap was. So what I end up with is about 25% of what his wage was. I can't maintain my home, I can't maintain the life I had when he was alive because I just don't have the financial means. The first thing is, when a widow gets to that point, "Is this all there is?" It's a very devastating situation.

**Mr Christopherson:** I was going to ask you about the issue you raised at the bottom of page 2 when you state that many widows remarry out of desperation, feeling they have no choice, and given what you've just said, I think that becomes clear.

One of our concerns in our caucus has been that many of the initiatives of this government have had an even greater negative impact on women. Certainly when we look at cuts to social assistance, we know the number of those families that are headed by single women; the health care cuts just across the board; pay equity of course is being all but eliminated in terms of moving forward.

I wondered if you could just expand on how big a program that is, because we know that some of the initiatives, in terms of cuts to rape crisis centres and other intervention tools that were available for women who were in abusive situations, are eliminated and a lot of women's advocate groups are saying that's going to force women to go back into abusive situations that they otherwise wouldn't have to, and Lord knows shouldn't have to. I just wonder if you could give us a sense of how many women are in

this situation, being forced into a domestic situation they shouldn't have to be.

**Mrs Poster:** I'm not sure about numbers. I think Mr Sheppard is going to be up a little later this afternoon and he can expand on that sort of thing for you. The rate, being the maximum amount on WCB — it's not a pension, it's a benefit level — is just around the same amount that I would receive if I were on welfare, so it doesn't leave you very much. Because I'm psychologically imbalanced, being a widow, I couldn't get drug plans or medical plans so therefore all these — if you have depression, anxiety, sleep disorders, you pay \$300 or \$400 a month for drugs. Out of an \$1,100-a-month benefit, that doesn't leave very much.

**Mr Christopherson:** Please correct me if I'm wrong, but it must leave you feeling almost like a double victim: first of all, the loss of your husband and then the loss of your quality of life, such as it otherwise would have been had you had a decent amount of money to fall back on.

**Mrs Poster:** Right. Just in case everybody's thinking, "Well, you should have insurance," if any of you are investing, to replace what my husband's wage was would require \$1 million in investments to replace what he was making, and at the interest rates as they are right now, most of us just don't have that.

**Mr Christopherson:** I think one could legitimately respond to someone who said, "Why don't you have insurance?" that the fact of the matter is that WCB was originally there to ensure there was proper, fair, equitable compensation for people who are injured or lose their life on a job through no fault of their own, which is again why I see it as you being left as a double victim in this case. That kind of cold-hearted response is just not acceptable.

**Mrs Poster:** If somebody wins the Encore or something on the 6/49, \$250,000 sounds like a lot of money, but try to live on it.

**Mr Christopherson:** Thank you again for coming forward. You've made a real impact.

**The Chair:** Thank you very much. We appreciate your coming before us with this issue.

1410

#### THUNDER BAY CHAMBER OF COMMERCE

**The Chair:** I'd now like to call the representative from the Thunder Bay Chamber of Commerce, please. Good afternoon.

**Mr Paul Duncan:** Good afternoon, ladies and gentlemen. Welcome to Thunder Bay. My name is Paul Duncan and I currently serve as the first vice-chair of the board of directors for the Thunder Bay Chamber of Commerce. With me this afternoon are Harold Wilson, a member of our chamber executive, serving as vice-chair, and our president, Rebecca Johnson. We are pleased to have the opportunity to address the standing committee on resources development to speak to issues regarding Bill 99, the Workers' Compensation Reform Act.

To give you some insight into our organization, the Thunder Bay Chamber of Commerce represents some 940 member organizations and over 1,300 voting representatives. We also note that 76% of our membership is comprised of businesses with 15 or less employees.

The general focus for our chamber of commerce during 1997 is on municipal issues. Workers' compensation, although not a municipal issue, is still one of great importance to our membership.

On April 10, 1995, our chamber made a presentation to the Royal Commission on Workers' Compensation. At that time, the chamber left the commissioners with a list of recommendations. Our presentation today refers back to that presentation and what has occurred during the past two years to address our specific issues. We will also comment on additional items that appear in the current legislation known as Bill 99.

The new legislation will hopefully reduce complexity and foster better service for injured workers and employers. With the board having a new name, the Workplace Safety and Insurance Board, the chamber anticipates that the board will have an insurance focus, with less politics involved. Changes in workers' compensation change with the government of the day. It is important that some long-term stability be made in this area to overcome the unfunded liability and guarantee the security of benefits to workers injured today and in the future and, more importantly for the business community, provide employers the competitive premiums needed to encourage investment and job creation. Increased employer and worker accountability, coupled with a higher expectation for worker-employer-board cooperation, is, we feel, a central theme of Bill 99.

We commend you for the steps taken to make the system financially healthy.

Bill 99 removes the board's jurisdiction to consider claims for chronic occupational stress under section 12. A positive step has been undertaken with the limiting of compensation for chronic pain — instead stressing treatment and pain management — and reducing benefit levels. What still needs to be examined and set out is what the entitlement criteria are.

In 1995 we stated that the 90% benefit level of net average earnings was generous by Canadian standards. We are pleased to see a slight decrease to 85% of take-home pay, which is now similar to other provinces, but still feel that this amount remains an incentive to remain off work. Bill 99 should include an explicit provision which indicates that pre-injury income should not be exceeded by compensation benefit awards, including CPP disability, and that economic circumstances in the economy or workplace alone should not allow compensation to be extended.

It is not acceptable and is difficult to defend a person who gets injured and develops a partial disability having more money after tax than those who continue working and progress normally. Also, with pensions, it is unproductive to have to defend workers' compensation pensions

that can be higher than the pensions of those who continue working. It is necessary to remove inequities to achieve support for the new direction being undertaken with Bill 99.

You have moved to speed the return of the injured employee to useful work. Modern advances in medicine show that rehabilitation and recovery can be achieved very quickly and effectively, provided that the right incentives are in place and any disincentives to return to work are removed.

Bill 99 confers extraordinary discretionary powers on the board, which may lead to unfair overcompensation or undercompensation and probably a proliferation of appeals. For example, the bill allows the board to deem a worker's earnings if "a labour market re-entry plan for the worker has been fully implemented," without defining what is meant by "fully implemented." The government's intentions are lost in this vague language.

We believe that employers generally cooperate in bringing injured workers back to the workplace. A duty to cooperate for the worker and employer under section 40 is positive; however, unfair and unneeded. New legal requirements for both workers and employers are created. This area should be looked at.

Bill 99 provides a very broad discretion to the board in setting individual company assessment rates, yet individual disputes are not allowed to proceed to the tribunal. This is unfair and must be changed.

There must be a method to distinguish between those injuries and illnesses which are work-related and those which are not. The chamber recommends that a solid basis for interpretation must be made. A common set of definitions must be made and adhered to.

We noted in the opening of our presentation this afternoon that 76% of our membership is comprised of businesses with 15 or less employees. Although the province defines small business at 50 people, those employers, who are the future of our province, must have their needs addressed. These businesses have small revenues and cannot afford growing expenses and huge liabilities. They depend on workers' compensation for compensation situations. These business people do not have the resources to keep abreast of changes in laws and legislation, let alone deal with issues that could result from workers' compensation. Because of their size and limited resources, it might not be possible to set up rehabilitation programs for part of their workforce. They also cannot self-insure due to limited resources, nor in most cases will they join self-support organizations. On an individual case, small business might cost the workers' compensation system more than larger businesses. The workers' compensation system must find ways to assist small business, to help reduce the number and severity of injury and have the injured worker return to full employment.

Support is given to changes requiring workplace parties to both file claims with the board, limiting claim filing for six months post-injury and requiring worker consent for



release of functional abilities information related to the return to work. Return to work holds the key for future workplace organizations and must become a more common practice in employment relationships. Employees who don't receive cooperation from workers and health care practitioners return to work facing impossible barriers. We believe that no final compensation decision should be awarded until all relevant information from all parties, workplace and health, has been received and considered by the board decision-makers.

The new legislation obliges both workplace parties to cooperate in returning the injured worker to the workplace. The issue of cooperation must be extended to cover all stakeholders: the worker, the union, the employer, the board, and the medical community.

In section 40, the chamber notes, the duty to accommodate explicitly includes contacting the worker and maintaining ongoing contact. The contact should be left broadly interpreted. Contact is required to determine both fitness and a timetable for return to work and does not constitute harassment. The chamber suggests a clearer statement of what is meant by "doing such things as may be prescribed" in sections 40(1)(d) and (2)(d).

Late intervention in vocational rehabilitation and the return to employment of the worker is an area that needs review. Currently, the board can contact the worker 45 days post-injury to determine if vocational rehabilitation is required. To ensure early intervention is established, the chamber is concerned that subsection 40(5) may authorize the board to contact the workplace parties and no time frame is specified. We suggest this intervention should be reviewed and clarified as to its intention and time frame.

#### 1420

There is considerable change to the Workers' Compensation Appeals Tribunal, starting with the name. The Minister of Labour has publicly stated that the tribunal is an area that requires more consideration. The chamber believes the tribunal must continue to be allowed to hear all issues of dispute for appeal purposes. Bill 99 limits the tribunal as per paragraph 117(2)4 of the current act. The tribunal must be permitted broad jurisdiction as it relates to consideration of appeals-objections, and should be permitted to hear all claims, revenue, and return-to-work/re-employment issues as they pertain to the workplace parties. This should apply particularly to subsections 80(4), (5) and (6). More generally, it is necessary to address the relationship between the board and the tribunal, which have been in conflict since section 86n was enacted with the establishment of the Workers' Compensation Appeals Tribunal.

The chamber believes policymaking should be under the exclusive jurisdiction of the board. Policy must be the basis upon which all decisions are made for workers' compensation. The chamber believes the tribunal must apply and be bound by board policy for consistent decision-making. Where no policy exists, the issue must be returned to the board for adequate consideration, with the

board of directors charged with overall policy development and dispute resolution authority. The tribunal must follow board policy, highlight policy problems in interpretation, and refer back to the board for resolution.

The government's and workplace parties' commitment to health and safety and return to work will ensure the continued success of experience rating. The chamber supports subsection 82(1) of Bill 99. We are pleased to see that the Bill 165 inclusion of a best-practices template has now been excluded from the act.

The chamber has supported the fundamental principle of an insurance-based compensation program. Bill 99 is silent on issues dealing with a second injury fund. The second injury and enhancement fund used by the board is essential in distributing the real cost of a claim and for ensuring equity in experience rating. When an employer is awarded cost relief under the second injury and enhancement fund, it has no impact on the compensation award to the worker. The chamber still believes the enhancement fund should be codified in workers' compensation statute.

The challenge to examine the workers' compensation system in Ontario is a great one. The Thunder Bay Chamber of Commerce has provided you with a few suggestions. Our organization would welcome the opportunity to discuss the compensation program further should the appropriate time present itself.

The business community wants to move towards eliminating injuries and illness while improving the return to work for employees. Safety incidents should be regarded as exceptions to the quality of performance in the workplace. We must work together as employers and employees to improve workplace safety, which in turn will reduce suffering and costs, improve quality, and decrease overall workers' compensation costs. This change in attitude will improve the business environment in our province and keep more people working and thus improve the economic stability in our community.

It is also important that workers' compensation adopt measurable internal targets of quality service. Customer service and customer satisfaction and performance among your employees must make workers' compensation a responsive and effective insurance provider.

We also recommend that you study the statistical injury and severity data available to identify the employment areas and groups that suffer injuries well above the averages for their businesses in a statistically significant way, and that you use this information to define the employment areas and groups which require the most attention, the actual incidents of these groups, and the experience of the safety agencies to develop the focus for programs geared to work with these employers and employees to reduce their injury frequency and the severity of their injuries. Such incidents are defective outcomes which should be regarded as exceptions to the quality of performance in the workplace. By improving workplace safety, reducing overall suffering and costs and improving quality will be realized.

Bill 99 is a definite move forward in reforming the workers' compensation system. Several issues are still not part of Bill 99 and must be addressed: definition of an accident, relating benefit levels to other jurisdictions, unlimited right for a worker's second medical examination, statutory benefit waiting period and independence of the board from government.

The Thunder Bay Chamber of Commerce congratulates the government on the overall direction being taken in the legislation to reform the Ontario workers' compensation system. We appreciate the opportunity to provide input into your deliberations concerning Bill 99, the Workers' Compensation Reform Act. The chamber will follow the future of Bill 99 with the anticipation that the bill, through our elected representatives, will address the issues we have raised today.

**The Chair:** There is enough time remaining for questioning only from the Liberal caucus.

**Mr Patten:** Thank you for your presentation this afternoon. Your general conclusion, by the way, is that this bill looks pretty good to you. Frankly, from our point of view, we don't think it's the kind of balance that you suggest. We think it's imbalanced. We think it is certainly not beneficial in terms of compensation to injured workers and that they're the ones paying the highest price on lost benefits, lost opportunities, lost appeals, and with less say than with the existing compensation plan. We've heard about the existing compensation plan. That's not to say that some people may not try to take advantage of it. I understand that. In any big plan there is a small number, but any of our research shows that is a very small group of people in any plan.

I would ask you this: If you say that you are truly interested in a healthy, safe workplace, what's your position regarding the folding in of the Occupational Disease Panel and the loss of independence that it would have?

**Mr Duncan:** The folding in of the Occupational Disease Panel?

**Mr Patten:** Which does the study of occupational diseases.

**Mrs Rebecca Johnson:** I don't have a specific answer on that.

**Mr Patten:** Maybe I can ask you another one then. In terms of balance, what do you believe this legislation will provide in terms of encouraging work accident prevention or a healthier or safer workplace? What is it that you believe will result if this bill is implemented as it's recommended?

**Mr Duncan:** I'm not speaking on behalf of the chamber on this particular answer, but in my opinion as a small employer, education will go a long way in preventing accidents. Having been a former member of the Royal Canadian Air Force and being in safety systems, I can attest to education being one of the major things that help and assist people not becoming injured. If proper safety procedures are used — as an example, if you're sitting in a jet aircraft and doing an inspection of that aircraft and you

don't use safety pins, you could blow your legs off or you could blow your arms off; you could kill yourself. Proper safety procedures are mandatory, in my mind, and the education thereof.

**The Chair:** Thank you very much for taking the time to come forward to the committee this afternoon. We appreciate it.

1430

#### SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 268

**The Chair:** I'd like to now call upon representatives from the Service Employees International Union, Local 268. Good afternoon, sir.

**Mr Jack Drewes:** My name is Jack Drewes from the Service Employees International Union, Local 268, in Thunder Bay. We represent approximately 4,500 members, mainly in the health care and related fields, in an area from the Sault-Algonia border to the Manitoba border.

**Ms Bonnie Cameron:** I'm Bonnie Cameron. I'm with SEIU, Local 268.

**Mr Drewes:** I just want to make one thing clear. This is an unusual circumstance for me. I'm usually a union rep and in that position I'm usually sitting on the employees' side of the table. It's really unusual sitting on the employer's side of the table, because as you know, as public servants, you are all our employees. I just want to make that point right out right now. As our employees, I hope you will take heed of what the people are saying to you at these hearings, because of course we all know further disciplinary action can occur in the next few years when we have another election.

I'd like to thank you for the opportunity to make this presentation. However, we think it is shameful that 130 submissions were allowed out of the 1,300 who requested standing. I guess we're lucky enough to get one of those. This is an explosive public issue affecting millions of Ontario workers that obviously deserves more, broader, in-depth public hearings.

The previous NDP government should be credited for realizing the magnitude of the problems and the complexity workers face in dealing with the WCB. The previous government had created a royal commission that would have given this issue the proper and thorough public input it necessarily deserves. However, the Harris government wasted little time in disbanding the royal commission and arbitrarily imposing Bill 99 in its place.

The obvious contempt for the working men and women of this province by the current government has never been so blatant and disrespectful. The government claims, or wants us to believe, that there is a financial crisis in the WCB, yet in 1995 the WCB reported an operating surplus of \$510 million. It's expected to be even greater in 1996. Yet the WCB refunded employers \$359 million in 1994 and \$247 million in 1995. That's \$606 million in two



years, to do the quick math for you, and Harris says there's a financial problem.

The only obvious problem here is that the government wishes to line the pockets of corporate welfare bums while the working citizens of this province get ripped off once again. The employers are bleeding the WCB dry with their continuous demands for lower premiums and greater rebates. The compensation system exists for workers, not employers. It was put in by a Conservative government I believe in 1914. Employers welcomed the no-fault insurance system idea and workers lost their right to sue the employer for accidents. Perhaps we should go back to that system.

The fact is that employers and the community know the Harris government doesn't want the public to know that the WCB premiums in Ontario are actually lower than two thirds of American jurisdictions. Quite frankly, the financial statistics show just the opposite of what this government would have the public believe. The WCB is one of the most competitive, efficient and financially strong compensation systems in North America. The government quite frankly — I'd better not say that word.

Bill 99 will severely restrict claims by restricting entitlement. It does absolutely nothing about reducing injuries on the job. Bill 99 will cut workers off WCB by the use of a concept called "normal healing time." If a worker does not heal from his or her injury in an arbitrary amount of time, as set out in the meat charts, he or she will simply be cut off at that point. Bill 99 will cut workers off WCB by deeming them able to go out and earn a wage in suitable employment. However, Bill 99 does not require that suitable employment be actually available to the injured worker who has just been cut off WCB. This is like telling your son or daughter they can put themselves through university by scholarship even though scholarships don't exist. But stop and think. Who benefits by these changes? The answers are fairly obvious.

Bill 99 puts even further restrictions on claims entitlement by restricting a claim time, a limit of only six months from the date of injury. This time restriction will severely limit claims for repetitive strain injuries in the future. It is a feature of Bill 99 — a coincidence? — given that repetitive strain injuries are the fastest-growing occupational injury, increasing by 600% in 11 years. It is quite obvious the government is determined to cut off a new generation of younger Ontario citizens as we progress into the 21st century. Again, who benefits and who loses with this type of legislation?

Bill 99 now forces employees to file their own claim as opposed to the current law that allows doctors to file that claim. The intimidation factor is enormous for a worker to ask their hostile employer — believe it or not, I've met a few hostile employers — for a claim form, particularly in a non-union workplace. Under Bill 99 workers must release their personal medical information to their employer or they'll automatically be disqualified for benefits. Now think about that for a moment. We had a person who had

some personal medical problems that were psychological in nature, and if they were released, they would become the subject of discussions around the coffee table, much like baseball scores, and that's no situation to have for the workers in this province.

Under Bill 99 the employer will have increased power to force their workers to see a company chosen doctor. Again, who benefits and who loses under these changes? The employer will have increased powers to define and implement the return-to-work process. The WCB no longer has any responsibility to monitor the effectiveness or fairness of this process. There is no provision in Bill 99 for union involvement in the return-to-work process. We have WCB training and we educate a lot of our members in helping each other through this complicated process, and Bill 99 hopefully — well, it looks like it's going to restrict that involvement.

If the employer doesn't cooperate with return-to-work efforts, the board puts the worker in the labour market re-entry program — another program — which does not guarantee the worker another job, which does not provide the right to retraining, and vocational rehab is no longer even mentioned in Bill 99. The worker will ultimately be placed at the mercy of his or her employer with no appeal or protection provisions.

The worker will be put under unbelievable pressure to cooperate with the employer's demands or be cut off benefits entirely. Workers will have no choice but to return to work in pain under the watchful eye of a company doctor. Many workers who simply can't will be cut off benefits and forced on to welfare. Any workers with the courage and the patience to appeal a claim denial will be forced to appeal to a new tribunal, no longer independent of WCB. Labour representation on this panel will also be conveniently eliminated. In most, if not all, cases the worker's fate will be sealed before the appeal is even heard.

The government claims that Bill 99 will focus on preventing injuries. There's nothing in it. Bill 99 prevents claims of those injuries, but does nothing to clean up the workplace. On the same day that Bill 99 received second reading, our labour minister was consulting in Toronto about gutting the Occupational Health and Safety Act. This is the agenda that workers in this province are facing.

We can of course go into much more specific detail of the carnage, but you've probably heard plenty of that already this morning and you will probably hear more of that as you finish off your deliberations.

What is most disturbing is the spin and the false perceptions this government has carefully orchestrated to fool the majority of the people in this province. That is why I believe the government will not expand its public hearings, that maybe the truth will come out and the public realize they've been given a slate of lies; I might as well say what it is.

There are a couple of other points I want to touch on. Our members we represent in the health care industry are

actually under this brief we've received from the Lancaster Health and Safety Reporter, "Nursing professionals experience the highest number of workplace injuries due to acts of violence," and it is a fact that the people who work in our health care system, trying to keep our people healthy, are actually one of the highest, if not the highest percentage of people to get hurt on the job. It certainly does no good when you start cutting the staff at those hospitals, as this government has done, putting additional strain on the people who are left to take care of the people. These people have enormous dedication to their jobs, taking care of the citizens of this province who are in our health care system.

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I understand that now, as we heard earlier, drugs also have to be prepaid by the injured worker. With some of the drug plans ranging up to \$400 or \$500 a month prepaid, how does an injured worker have that money to put out in the first place and then wait for a claim for a couple of months? That's ludicrous. There are no savings there. All you're going to do is disfranchise the people who need the drugs but just can't afford them, and therefore they won't get any drugs and I guess that's how you're going to save your money.

I should also touch on the forms you want the employees to fill out: 24% of the people do not read or write at a grade 9 level, so how can they cope with this form if one little mistake on this form will have them totally cut off? I guess that's another system of eliminating people off WCB, for them not to cross a certain t or dot a certain i and the form gets sent back to them "incomplete."

Another question: How many languages are these forms going to be printed in? Are they going to go to the specific language of the people? Are they going to be printed in Ojibway/Cree? Are they going to be printed in the various languages of the ethnic people who fill this area? That's a question.

We've already heard about the Occupational Disease Panel which was conveniently terminated.

In conclusion, this legislation rewards employers handsomely for ignoring injury prevention. Therefore, Ontario will become statistically the safest place on earth, while in the real world of the workplace workers will be forced to work while injured, while being maimed, killed and exposed to hazardous substances, in the interests of this government's quest for a profitable business-friendly environment.

**Mr Hampton:** I have a couple of questions, Jack, that flow out of your presentation. You note that the unfunded liability has been coming down at the Workers' Compensation Board, yet the government says there is a financial crisis at the Workers' Compensation Board. I understand that since 1994, when the NDP amendments were introduced, the unfunded liability has come down by \$1.1 billion, in less than three years. Are you aware of that?

**Mr Drewes:** Yes.

**Mr Hampton:** I also understand that in 1993 the federal government commissioned a report by KPMG, and KPMG reported in its study that Ontario's workers' compensation premiums compare favourably with Minnesota, Wisconsin, Michigan, Ohio, Pennsylvania and New York. Are you aware of that?

**Mr Drewes:** Yes. I believe, as I stated earlier, two thirds of the North American market actually pays higher premiums, but I'm not sure if those states even have the same benefits.

**Mr Hampton:** You stated in your presentation that you're unable to find anything in the bill, the proposed act, which will promote greater safety on the job.

**Mr Drewes:** No.

**Mr Hampton:** This government has already done away with the Workplace Health and Safety Agency, which was in effect a bipartite agency — employers and worker representatives coming together to work on education, safety education, safety procedures in the workplace. Do you see anything in this legislation —

**Mr Drewes:** There's nothing in this legislation even remotely going back to the days when the employers had to include workers in their meetings on health and safety, and we had one worker and one employer trained to do assessments throughout the workplace. In the workplace I worked at at Lakehead University they had a huge amount of unsafe areas, as you can well imagine with chemicals. They were cleaned up — they were ordered cleaned up. I think that's going to go down the tubes with this legislation. If the employers don't have to meet on the committee, they won't meet on the committee, plain and simple.

**Mr Maves:** Thank you for your presentation. I'll say a few things and then finish with a quick question. The forms you spoke of are available in two languages, French and English, and services are available in 70 languages from the Workers' Compensation Board.

**Mr Drewes:** Are they accessible by all the workers?

**Mr Maves:** Yes, they're available from the Workers' Compensation Board. If the worker contacts the compensation board in a particular language and it's one of the 70, then they can get service in it.

After the Friedland formula was brought in by the NDP, any further reduction in the unfunded liability is because of reduced cost of administration, better performance of the asset fund and increased revenues due to increased employment and a reduction in work-time injuries.

You mentioned that RSIs, repetitive strain injuries, would no longer be compensable. That's not the case. They still are compensable.

You said there was no place for the board to play a role any more in return to work. That's not true. In sections 45, 46 and 47, it notes a role for the board.

I guess the last thing I want to ask is that I continue to hear this and I continue to say it's not the case: Maybe you can tell me where you get the impression from that a



worker can only get a claim form from his employer. Where is that in the bill?

**Mr Drewes:** Where else are they going to get a claim form?

**Mr Maves:** They can get them now from their doctor, they can get them from their union, they can get them from the board itself.

**Mr Drewes:** If they have a union.

**Mr Maves:** They can still get them from a doctor. Nowhere does it say they can only get a form —

**Mr Drewes:** And there are time limit restrictions on these forms and all the rest.

You brought up an interesting point now. You said the WCB has more money because of the financial management your government has done, and now they're coming up. Well, here comes the old saying, and it makes a little common sense here: "If it ain't broke, don't fix it."

**Mr Maves:** It's just being fixed.

**Mr Drewes:** Why fix it if you're making \$1 billion now?

**Mr Maves:** Previous to 1995 they kept taking money out of the asset fund to cover costs and to cover benefits, and that can't continue. The asset fund is there to provide revenues so that workers will have security.

**Mr Drewes:** It made \$1.1 billion. It's making billions. As a matter of fact, the employers are getting millions back in rebates. Why are you tinkering with a system that's working? Why are you tinkering with it? It's been working.

**Mr Maves:** Return to work is not working.

**Mr Drewes:** It's working in the workplaces I'm in.

**Mr Maves:** The unfunded liability is still a problem. It was addressed, as you suggest, by the NDP.

**Mr Drewes:** Have you spoken to workers on this or just employers?

**Mr Maves:** Workers too. Mr Jackson spoke to 150 injured workers in his community and I spoke to injured workers in my community.

**Mr Drewes:** But the fact is that, in the two years plus, this government did not listen to one thing workers have had to say, but they've done and implemented everything the employers have had to say. You'd think we'd get one in there out of all those. Out of the last almost two and a half years of legislation, you'd think the workers' perspective would get in there once, but it hasn't.

**Mr Maves:** You wanted the three-day waiting period?

**The Chair:** Mr Patten, please.

**Mr Patten:** I take it you're not a supporter of Bill 99.

**Mr Drewes:** Oh no, unlike the previous speakers.

**Mr Patten:** That was tongue in cheek.

I think you made a number of excellent points. I'll just identify a few that I think need to be revisited. The one around "normal" healing time without question obviously needs to be reviewed. You implied there would be more restrictive eligibility in terms of what is compensable.

**Mr Drewes:** That issue of normal healing time speaks to a meat chart type of ideal. There's a norm established,

and if you don't fit in that norm you get tossed out. That is patently unfair because there could be all kinds of complications. Through my involvement with injured workers, there's nothing that's been normal. There's absolutely nothing normal about a worker getting injured on the job. So how can they put a meat chart to that sort of thing and have time restrictions? That should be up to the worker and their physician, not the company doctor, or at the company store; it should be the employee's.

1450

**Mr Patten:** I agree with you on that. If indeed the programs are less restricted, the eligibility for compensation or support of any kind is less, but indeed it doesn't address truly legitimate instances where people are hurt on the job. What will this mean?

**Mr Drewes:** This will mean workers being cut off compensation through some technicality where they fall out of the norms. This will mean a lot more injured workers using up valuable welfare dollars in order to stay alive, because people will stay alive no matter how much you're going to try and knock them down, and then the costs are there. You're robbing Peter to pay Paul here. It doesn't make sense.

**Mr Patten:** That's right. So it's not an honest system in that sense. It may look good financially but in fact it's passed the responsibility on to other programs that the province or the taxpayer will have to pay.

**Mr Drewes:** And it does not even look good financially.

**The Chair:** That concludes the presentation time. Thank you for taking the time to bring your views before the committee this afternoon.

#### NORTHWESTERN ONTARIO BUILDING AND CONSTRUCTION TRADES COUNCIL

**The Chair:** I'm now calling representatives from the Northwestern Ontario Building and Construction Trades Council, please. Good afternoon.

**Mr Steve Silversides:** My name is Steve Silversides. I'm president of the Northwestern Ontario Building and Construction Trades Council. I appreciate this opportunity to address the committee and to raise some concerns related to this pending legislation.

The council is comprised of 13 affiliated unions representing approximately 4,000 construction workers residing in Thunder Bay and throughout northwestern Ontario. Most of the union offices are located in the city of Thunder Bay.

Although geographical jurisdiction varies, the majority of trades are responsible for manpower referral to job sites located west of Thunder Bay to the Manitoba border, east of Thunder Bay to White River, located on Highway 17, and to Cochrane, located on Highway 11. All points north and south from the United States border to Hudson Bay are also included. A map highlighting the aforementioned area is enclosed.

This is pertinent information which provides an overview of the area travelled by construction workers in northwestern Ontario. The distance between Kenora and Cochrane is approximately 1,300 kilometres. Some job sites are located in towns along the main highways while others are located in more remote areas. Some locations are not accessible by highway or roadway.

Furthermore, a typical week for a construction worker in northwestern Ontario is to leave home on Sunday heading to some other location, work either a four-day, 10-hour week or a five-day, eight-hour week and return home for the weekend.

Most construction work in northwestern Ontario is categorized as heavy work activities. The nature of this work produces sprains, strains, cuts and burns to the back, neck, hands etc. Usual recovery time can be anywhere from a few days to a number of weeks depending on the severity.

The uniqueness of the construction industry, with its multi-employer and cyclical nature, has always caused WCB problems. This piece of legislation does little to address these problems and in some cases may prove to compound them.

Construction workers, whether or not they are represented by unions, are continually faced with problems involving WCB. These problems include but are not limited to notice of accident, claim for benefits, return to work, determination of earning basis, determination of benefits, claim management etc. The industry is grossly misunderstood, resulting in an adverse effect on the workers.

The following issues warrant a review prior to the endorsement of any new legislation:

Issue 1 is notice of accident, claim for benefits: Presently a worker who is injured on a construction project can report the injury to his or her site supervisor, who should then fill in a form 7. This is the usual procedure for an acute pain injury.

Most employers have solid policies related to the completion of form 7 and sending a copy to the WCB office. However, workers still face situations where the employer is reluctant to fill in the form and negotiates an alternative with the injured worker.

Another means currently used for informing WCB of an injury is through the medical profession. An injured worker seeking attention at his or her doctor's office or hospital emergency for a work-related injury would be successful in having the WCB office informed of the injury. Quite often this is the case involving gradual pain injuries: pulled muscles, strains etc where symptoms kick in after leaving the job site, sometimes not until the next morning. The latter is especially important to construction workers who return home from remote job sites and start experiencing painful symptoms resulting from a job site incident.

The new legislation proposes that the injured worker initiate the claim by completing a form and at the same time informing his or her employer of the injury. The new

legislation also removes the medical profession from filing a notice of accident. Although information related to the implementation of this new procedure has not been made available, it definitely raises concerns: obtaining the forms both on and off the job site, situations involving remote job sites, literacy, language etc will result in delays and possible denial of benefits. The status quo offers the injured worker an alternative by means of the medical profession should he or she, for whatever reasons, be unable to file a form through his or her employer.

Issue 2, earning basis and determination of benefits: It is one thing to reduce benefits from 90% to 85% for the sake of the questionable and controversial unfunded liability, but it is absurd to suggest that a construction worker's hourly rate times the 40-hour week does not realistically reflect his or her earnings.

Whether this issue is employer-driven or board policy, injured construction workers are being nickel-and-dimed to death. At a time when they are unable to accept employment due to a job-related injury, they are also told their benefits will only be a percentage of the maximum.

Employers are quick to complain that they only hired an individual for a short-term job and should not be held liable when an injury occurs early in the hire-on. Well, short-term work is a reality in the construction industry. A transient workforce and transient employers are realities in the construction industry. Jobs finish and injured construction workers are being left to mend at reduced benefits.

The earning basis and determination of benefits should be based on the hourly rate times the 40-hour workweek times 52 weeks. When the construction industry peaks, these earnings are also a reality.

Issue 3, office of the worker adviser: The new legislation denies access to the office of the worker adviser by unionized workers. It is difficult to comprehend the motives behind this discriminatory act. The Jackson report indicated that workers not represented by unions need the assistance of bodies like the OWA to navigate the complexities of the workers' compensation system. I do not see where Mr. Jackson obtained his information that unionized workers do not require similar assistance.

Our council was previously informed by the Honourable Elizabeth Witmer, that moneys would be allocated to the construction sector to train personnel to represent members when dealing with WCB problems. All the training in the world does very little if you do not have the resources to employ these trained people afterwards.

Unionized construction workers in northwestern Ontario would be forced to give up their union membership in order to access the office of the worker adviser. This withdrawal would adversely affect pensions, health and welfare coverage, employment opportunities etc. There is a strong need for the office of the worker adviser, and it should be accessible to all workers.

Issue 4, disclosure of medical information: The proposed legislation demands that the injured worker consent



to the disclosure to his or her employer of information provided by a health care professional. It forces the worker's doctor to provide medical information about a worker to the worker's employer. Failure to comply will result in loss of benefits.

Although it is stated that this information is for the sole purpose of facilitating the worker's return to work, I suspect that it will be used for alternative purposes by some employers. Furthermore, if workers resist an employer's return-to-work plan, their benefits can be cut off. In any event, an injured worker who is reluctant to consent to the release of this one-time privileged information will see his or her claim either delayed or disallowed.

In closing, I would suggest that northwestern Ontario and its remoteness be looked at more closely prior to finalizing any changes. I would further suggest that the construction industry and its uniqueness also be considered.

1500

**Mr Jerry J. Ouellette (Oshawa):** Thank you very much for your presentation. I have a couple things. At lunch we were able to meet with labourers from a local construction group and I just wondered if this was the norm for the northwest: They said there is about six years' worth of work with three shifts full-time. Is that what's happening in the northwest section of the province?

**Mr Silversides:** Regarding current construction, right now construction work is fairly sporadic. I don't believe there's any long-term —

**Mr Ouellette:** This was just their perception. I wondered if it was the same throughout the entire northwest or whether it was just here in Thunder Bay.

Yesterday a question came forward with your northeastern counterpart. The way I understood it was that if a construction worker were to take a day off to travel to see a doctor and then come back the next day, they would not be eligible to return to the job they were going to. Is that your perception of what would take place?

**Mr Silversides:** That has never been brought to my attention. I look after one particular trade and most of my members try to handle their WCB claims themselves. Quite often they've dealt with the office of the worker adviser, and from time to time they may ask for my assistance in contacting a certain person I may know in the board office or someone I may have met on a committee. We try to work through some of these little things.

**Mr Ouellette:** What was the average length of claim? The reason I ask is because the concern brought forward by your industry in the past was that because of the short-term employment, the job may not be there when they come back. I'm just wondering, what is the average length of claim? Are they off, as mentioned yesterday, just a day or two or is it long-term? I imagine both are there.

**Mr Silversides:** We have problems. For instance, some of the welders in the construction industry are starting to experience neck pain. They're around 40, 41, 42 years old and have been welding for 20 years. It's hard to get a handle. We're trying to do the documentation. Other

injuries, like I said, even a pulled muscle could be four or five days to four or five weeks, depending on the severity. So it varies, and quite often right now the job isn't there. Some of the jobs run two, three, four weeks, so if the injury lasts longer than that, then that employer is gone. Quite often the employer is not even from the local area.

**Mr Ouellette:** How do you think that situation should be resolved, whereby they're off for compensation and then the job isn't there? What's your perception of how it should be taken care of?

**Mr Silversides:** It's actually difficult for the hiring hall, because the member indicates he's on workers' compensation and then basically it's up to them to inform us that they're off workers' comp and available for work at the trade. We have a tendency, I suppose, to keep at arm's distance from the member's claim unless they request assistance. A lot of information goes by that we're not privy to.

**Mr Patten:** I have a quick question. Thank you for your presentation. I appreciate your comment about the distance factor. I'll try and summarize your position. I think it is difficult for northerners to get through to the legislators at Queen's Park because, first of all, most of your policy people are in Toronto. Everything is Toronto-based and anything east of Yonge Street is the boonies and north of Steeles is almost out of town. I say that facetiously but it's true; it is absolutely true. I come from eastern Ontario. We have the same battle. We say, "Look, while it may be good for Toronto, it doesn't mean it's good for everybody else. There are other factors to consider."

I believe it's important to emphasize that and I think our committee should look at that. What you're essentially saying is that someone has an injury, they don't work where they live, they travel a lot and they tend to travel farther for work efforts, especially in your industry, than they would in, let's say, other parts of the province. I would take that as a given. I gather you're saying that someone has something that takes maybe hours or overnight to develop and they go home and all of a sudden they've got tremendous strain in their back and the employer says, "Listen, when he left the site he was fine." But the person is now 800 or 500 kilometres away or whatever it may be. I think that factor has to be considered. Is that one of the major points you want to get across?

**Mr Silversides:** One of the biggest concerns of the construction industry is that it's easy to go downtown in Toronto and see the big PCL construction project that's going on for a year and a half. They have all the job site trailers and the administration is great. They have their policies, everything, but in northwestern Ontario you could have an employer coming in from BC, Nova Scotia, the States, virtually working out of a pickup truck with a cell phone. All the forms, if they have them, are in the briefcase and it's a roughshod operation.

Then if you get hurt on one of those particular job sites — and a lot of construction guys, and gals, I guess, are fairly hardy. They shrug it off. They're used to those strains and whatever and it could be a Thursday, it could be a Friday, they head on home and all of a sudden Saturday morning, bingo, they're rolling out of bed on all fours. Some of them don't even have the cell number of the supervisor up on the site and that's a 500- or 600-kilometre drive back.

The remoteness is a definite factor in northwestern Ontario. We have employers in the area who for the most part are here, their head offices are here, but we deal with a huge number of employers who come into the area and do periodic work and then they leave. The administration is not as good in that area as probably a job site in southern Ontario.

**Mr Christopherson:** Thanks very much for your presentation, Steve. I want to pick up on the issue you raise of disclosure of medical information. For some reason the government members still have difficulty understanding why Ontario workers feel so outraged that their private, personal medical information is being given to their employers and that they have to sign a consent, and if they don't they could be denied benefits. Part of the government's response is, "Well, it's just a functional ability report." It's not dealing with detailed doctors' notes and therefore that makes it okay somehow in their mind. I have a copy of the particular document the board has circulated to stakeholders for feedback.

I would first of all like you to say in your own words to the government members, since they seem to miss the point, why ordinary Ontarians feel so strongly about any level of their own personal medical information being given to their employer whether they want to or not.

The second thing I want to raise, and I say to the parliamentary assistant that if this has now been clarified, I haven't yet heard and I would appreciate him letting me know, but I've raised this before — to his credit Mr Ouellette raised a similar concern in Toronto. One of the things it says in here to the health professional filling out this form is: "The employer and the worker will use this information to return the worker to suitable and available work. Their return-to-work plans will reflect the physical precautions you have noted" — you, the health professional filling this out — "and presume that no clinical contradictions exist for other work activities."

My concern, and I think it's shared by Mr Ouellette and perhaps others, is that this doesn't say just injury-related, physical abilities; this is all restrictions. If you have some other medical problem that affects your functional ability, whether it's work-related or personal, it's going to appear on this form, and that may affect your ability to perhaps bid on other jobs or return to the specific job you want, although you were managing. Now that information is theirs. I don't hear Mr Maves jumping in and saying, "No, that's not the case," so I presume that's a correct assumption.

I'd like your thoughts on what that might mean to your members, first of all, the principle of private, personal medical information being given to an employer, and second, the specific of non-work-related injuries being reported at all in the context of what information is being given to an employer. Your thoughts on those things, please.

1510

**Mr Silversides:** First of all, regarding the disclosure of any medical information — I'll just get my train of thought here. When you take sizes of communities, when you have few employers within that community, the grapevine runs rampant. I wouldn't want any of my members so-called blackballed or blacklisted because around some table somebody was discussing medical information or misconstruing some type of medical information contained on a form. We all deal with forms and paperwork, and quite often we can read into a lot of the information what we want to read into it. I guess that's what appeals are all about. You present your own case.

In small communities — and Thunder Bay is a small community, Sarnia — the construction industry in particular is a close-knit network within these small communities. It happens now without the disclosure. There are members of certain trades and there are certain construction workers in the area who are tagged by the employers. They're quick to release those employees once they get on those job sites. They do it within the parameters of the collective agreement so there won't be any grievances or anything, but layoff is quick. In the construction industry, that's the way it's done.

Some employers — I'm not saying all; I'm just saying that with some employers it is their policy, on certain types of injuries, to say no. They fight it from day one. If it's a back injury, "No, that did not happen on my job." It's their policy. That's what they've been instructed to do. They don't want to be held liable for anything of that nature. In fairness to some of the employers who have hired an employee and it's the first week that employee is hired, and the individual has been in the trade for 30 years and the back isn't as strong as it was when they were 20 years old, all of a sudden a claim is put in and now that employer is being tagged with it. I sympathize with that employer. Maybe that should be something that's looked into, some type of general funding or something for injuries of that nature, especially to do with the construction industry.

There are a lot of criteria and there are a lot of limitations regarding what you can lift and everything, but we all know the reality of the situation. I've probably lifted four times what I was supposed to out there in the field to get the job done so the client-owner could get that piece of equipment back on line and start producing. It's the nature of the industry. That's the difference between what really happens out there in the workplace and the idealistic nature of what should happen. We're all faced with it.



**The Chair:** With that, thank you very much. We appreciate your taking the time to come before the committee this afternoon to give us your advice.

### THUNDER BAY AND DISTRICT LABOUR COUNCIL

**The Chair:** I now call representatives from the Thunder Bay and District Labour Council. Mr Pugh, welcome.

**Mr Paul Pugh:** My name is Paul Pugh. I'm a member of the executive of the Thunder Bay and District Labour Council. I have with me Judith Mongrain, who is the second vice-president of the labour council. Judith will begin our presentation.

**Ms Judith Mongrain:** "All for ourselves and nothing for other people seems in every age of the world to have been the vile maxim of the masters of mankind" — quoted from Adam Smith's *The Wealth of Nations*

"Masters are always and everywhere in a sort of tacit but constant and uniform combination, not to raise the wages of labour above their actual rate.... Masters too sometimes enter into particular combinations to sink the wages of labour even below this rate.... It is not difficult to foresee which of the two parties must, upon all ordinary occasions...force the other into compliance with their terms. The masters, being fewer in number, can combine much more easily; and the law, besides authorizes, or at least does not prohibit their combination, while it prohibits that of the workers."

On behalf of the Thunder Bay and District Labour Council, we wish to thank the tens of thousands who have protested in the streets, the workplaces and at the Legislature, forcing this arrogant, brutal government to at least observe the pretence of public consultation.

We wish to emphasize that Bill 99 equally threatens public and private sector workers, and Paul and I, representing both the public and private sector, are here on behalf of the council. In northwestern Ontario, workers have cause to fear the consequences of this legislation. Because of the nature of the region's economy, many jobs are based in the forest industry and mining. Some of these jobs are among the most dangerous in the province. In addition, we face invisible hazards from chemical substances, repetitive strain and stress due to the ever-intensifying pace at all workplaces.

Public sector workers, responsible for the maintenance and running of essential services, despite the region's extreme weather for much of the year, face many of the same hazards as workers in the private sector. Because of our many years of union activity — between us we have 45 years of workplace experience representing workers — we could cite many examples of serious problems faced by injured workers, problems that could be and should be addressed by legislation.

In the north particularly, changes to the WCB will cause more hardship. It's not unusual for injured workers to wait over a year to see a specialist. The north has a

shortage of all physicians, but specialists are more and more difficult to find.

For many injured workers in the north, travel to Toronto, over 1,000 miles away, is one of their few options to seek medical treatment on a timely basis. This government's continued cutting in the health sector will take this option away from northern workers as the waiting lists for specialist treatment continue to grow.

But none of this is of any interest to this government. Its sole concern, and the object of Bill 99, is obvious: reduce costs for employers immediately, render workers more dependent and subservient and move towards privatizing workers' compensation so the insurance companies can feed off disabled workers.

#### 1520

**Mr Pugh:** Immediately on taking office, the Harris government declared war on workers. Virtually every action, every piece of legislation since, has obviously been directed towards weakening the position of working people, eliminating or gutting standards and programs that benefit workers. Beginning with its first act, the slashing of social assistance, through its anti-labour Bill 7, on through the anti-democratic omnibus bill, and in each and every one of its actions and legislation, this government has made its intent abundantly clear: to drive working people into a weak and defenceless position before their masters. Bill 99, a bill to gut workplace safety and workers' compensation, fits well into the Harris-corporate agenda.

There is absolutely nothing in this bill that we can support; however, we join with the Ontario Federation of Labour in noting the following particularly anti-worker provisions: reducing the inflation protection of unemployed workers with disabilities by 75%; forcing workers to undergo risky operations or take drugs which they prefer to avoid because it is cheaper than the treatment recommended by their physician; privatizing vocational rehabilitation so that making a profit from a worker's misfortune becomes a higher priority than the worker's wellbeing; cutting future disabled workers' pensions in half when the government knows full well that most injured workers do not have any access to an employer pension plan; cutting benefits from 90% to 85% of net pay; setting arbitrary time limits on one of the most debilitating disabilities — chronic pain; eliminating compensation for chronic workplace stress; eliminating the independent appeals system and placing WCAT decision-making under the control of an employer representative appointed by this government; deeming workers to be able to obtain jobs which are not available and then setting their benefit levels on the pretence that a job is available.

The foregoing, plus the many other anti-worker provisions of Bill 99, are supposedly justified by a phoney "funding crisis" of the WCB. In fact, as we all know and as we've heard today, the board has built up huge surpluses, amounting to over \$1 billion, during the past three years. It has over \$8 billion in the bank and owes nothing

to anyone. The "funding crisis" is nothing but a smokescreen for yet another blatant attack on workers.

What would be achieved by Bill 99? A declaration of open season on injured workers; taking the responsibility for injuring workers away from the employer and blaming the injured for their injury; reducing injured workers to being poor and homeless, and we all know how this government has demonized "those people." To be poor and injured is to have done something wrong, and those who have done wrong are punished by this government.

If this government has even a shred of concern for working people, of which we have yet to see any indication, it will scrap Bill 99. There is no way to amend it other than through a process of deletion. Every paragraph deleted improves the bill. Deletion of the bill would improve it most of all. Better yet, we urge the government to do one honourable thing during its term to date: resign.

The Thunder Bay and District Labour Council will continue to work with others and continue to do everything it can to block, impede and delay this government's anti-people activities. In this we join with the vast and growing majority of the citizens of Ontario.

"Servants, labourers and workmen of different kinds make up the far greater part of every great political society...what improves the circumstances of the greater part can never be regarded as an inconvenience to the whole."  
— Adam Smith, *The Wealth of Nations*

**Mr Gravelle:** Thank you very much for your presentation, Paul and Judith. This is Bill 99. As you know, we've got some more frightening stuff ahead in terms of Bill 136, which is another — it's hard to know the right words, but it's an extraordinary piece of legislation which obviously is a further attack on labour, maybe the one that will be the most violent. I'm operating, I suppose, on the premise that we'll probably be ending up in public hearings much like this, which are frustrating, because we recognize there aren't going to be a lot of changes.

One of the things I'm thinking is that there are some aspects of this bill — we understand that there aren't going to be major amendments, that the government won't accept them. But there are some things that strike me as really wrong and unnecessary.

For example, the notice of accident, the claim benefits: I can't see why the government needs to have this particular piece in there. It may not seem like a big deal, but it seems to me that all it does in terms of changing the way of the worker having to initiate the claim is that it means there will be ultimately fewer, because of circumstances. Mr Silversides got into that. That seems to me one that will have an impact because of the way it's being changed. If it was left as the status quo — we're not going to be happy with this piece of legislation, but that makes sense. It wouldn't be a great deal to ask, to maintain the status quo in terms of notice of the accident claim. Mr Silversides, in terms of the construction industry, made that clear. I trust you'd agree with that. I think that's something we should be asking for in amendment form.

The other is the office of the worker adviser. Just give me your thoughts on that. My guess is that the response would be, "If you're unionized you don't need it." I happen to know they do. That's my guess, that they would say the union will look after them. I happen to know that unionized workers do; it's a very complex thing. But give me your thoughts on the fact that unionized people will not be able to access the office of the worker adviser.

**Ms Mongrain:** It concerns us a great deal. The majority of activists in the union movement are volunteers. They work for an employer. They put in their eight-hour day for the employer and have to do their volunteer activities after that. To take away the option of being able to work with the adviser — not all our locals have the people with the expertise, nor can we fund them to do this work full time, and it needs to be done full time if they cannot go to the adviser. It is a greater and greater difficulty for us. Even at this point, without the bill going through, our members are being turned away and pointed back to our office.

**Mr Gravelle:** In effect, it's being treated as if the bill is actually law.

**Ms Mongrain:** Yes. That's what's happening, and it's wrong.

**Mr Gravelle:** I'm sure the government members would want to correct that. That's wrong.

**Mr Christopherson:** Thank you very much, Paul and Judith, for your presentation. Although most presentations allude to it, yours deals very directly with the fact — and you say so explicitly on page 4, where you state: "Virtually every action, every piece of legislation since," meaning since the government was elected, "has been directed towards weakening the position of working people, eliminating or gutting standards and programs that benefit workers."

I think the fact that you chose, here in Thunder Bay, to have a representative of the public sector and private sector labour movement makes that case even more strongly. I think it's important the government understand that there's no division in the labour movement on this issue; there's no division between unionized and non-unionized in terms of the impact, nor between disabled and able-bodied workers in terms of the impact on those people and how much they oppose what the government's doing.

Being from Hamilton, it's always enlightening to be in the north, to learn more and more about it each time. You mention that forestry and mining are a couple of the big parts of your economy here. When I think of what's happening in MNR, you must have faced cutbacks in MNR and that's meant job losses up here. I know you're looking at major cutbacks in your health care system and hospital closures. You mentioned that social assistance rates, meaning the poorest of the poor, have been cut by 22%. We know the Workplace Health and Safety Agency has been eliminated, and we know the government is already attacking the Occupational Health and Safety Act, which means there are going to be more and more injuries.



My impression is that your presentation as the labour council was a sort of holistic presentation to say, "This is the total sum of what you're doing to us here in Thunder Bay." I can only imagine that the end result is that you're expecting your local economy, jobs as well as the health of the workers, will face major negative impacts in the next few years as a result of virtually everything the government has done. Is that the correct message that you're sending from here in Thunder Bay?

**Mr Pugh:** Yes, that is pretty close to exactly what we're experiencing and what we're trying to say, at least to the members of the opposition, because we realize the government members aren't listening.

Both Judy and I represent workers before workers' comp cases in our respective unions, and we've seen that the provisions of Bill 99 are already being implemented. I could personally relate several cases of workers being forced to do things they shouldn't be forced to do. But we wanted to get on to the general focus of what we believe this government is out to do, which is essentially to remove all the social safety net, all these structures that workers at one time, through generations of struggle and sacrifice, built up, such as the welfare system, such as health care, such as education, such as workers' comp, all of these platforms that gave us something to stand on when we were facing the employers, the large corporations.

We heard the bullshit from the chamber of commerce and the small employers saying how they're so important and all that. The fact of the matter is that the people who call the shots in this province and in Canada are huge, powerful corporations that have enormous clout. These are the people who set the tone in the workplaces, and the other ones just follow suit. These are the people that we have to face.

This government, these pigs over here, are removing the platforms which gave us a little bit of something to stand on when we're facing up to those people, removing them one by one, one by one, manufacturing these phoney crises, like the crisis over funding, the crisis in education, the crisis over welfare cheating, all manufactured out of thin air so that then they can proceed to attack area after area that is essential to our wellbeing. These programs, these things that people gave their lives to build up, they are stripping away from us now. That's what we want to focus on, because the other stuff is just a smokescreen, just smoke and mirrors. They really aren't concerned about all that stuff. What they want to do is to make us defenceless.

1530

**Mr Ouellette:** I want to find out if it was just an isolated area or whether it was an occurrence happening elsewhere: Yesterday one of the presenters said that one of the areas that's complicating the WCB process was that the medical profession was having difficulty filling out the forms, and they were having a lot of problems in going

back and forth. Is that something you're finding in this area as well? Are you hearing about that at all?

**Ms Mongrain:** Most of the physicians we deal with in regard to claims with our members are extremely frustrated that when they clearly state on the forms the condition of the injured worker, they get inundated and buried in more paperwork that they must fill out and get in quickly or they know that their patient is going to be without any money. It continues to be a big frustration for them. I won't use the language my own physician uses when you walk in with more compensation forms to clear up: You didn't dot the "i" or you didn't cross the "t."

**Mr Ouellette:** It was being said yesterday that one of the problems was that the forms were not being filled out correctly and it was causing some problems. I just wondered if it was an isolated area or whether it was being experienced here as well.

**Ms Mongrain:** I think that because the physicians are overwhelmed, and in the north we don't have enough physicians of any type, they don't have the time. They do it as quickly as they can. They know there's a deadline to make sure the clients, their patients, are serviced through the WCB, and so those kind of errors are made. Then we go back to get more forms filled out. It's unfair to the physicians who are trying to provide the services to the injured workers. They don't like it. They know that their patient is injured. They have said so very clearly on the form, but if they just miss the mark, everything goes back and they start over again.

**Mr Spina:** Paul and Judy, thank you. I didn't realize that my curly tail was showing; I'm being called a pig.

**Mr Pugh:** I can see it very well.

**Mr Spina:** I had a question. You mentioned that between the two of you, you have 45 years' experience representing workers, and that's something good and positive and ought to be respected. You talked about the problems faced by the injured workers because of the remoteness of areas like the lumber camps, mining areas and so forth. Bill 99 aside, as I said earlier today, what one priority would you make as a recommendation that WCB could adopt to improve the service to that situation?

**Ms Mongrain:** I think the major thing for WCB improvement is that when a form is submitted saying that a worker has been injured, it is recognized that a worker has been injured.

**The Chair:** Thank you very much. That concludes our presentation time. We appreciate your taking the time to come this afternoon.

UNITED STEELWORKERS OF AMERICA,  
NORTHWESTERN ONTARIO  
AREA COUNCIL

**The Chair:** I'd now like to call representatives from the United Steelworkers of America, Northwestern Ontario Area Council. Welcome.

**Mr Moses Sheppard:** Thank you, Chair. My name is Moses Sheppard and I'm a staff representative for the

United Steelworkers. I service local unions from Manitowadge in the east to Red Lake in the west. Let me apologize to you first of all because our presentation has been captioned as "Mr Chairman." I apologize for that. It's a male thing. Don't ask me why we do it.

I have with me, Madam Chair and members, a number of workers, most of whom are injured workers. I too am an injured worker. I worked in a mine a number of years ago. I wonder how many of you know what it is to be an injured worker. I first got injured in 1959. I went deaf. I was in the navy at the time. I haven't heard anything out of my left ear for about nine years. For the right ear I need a hearing aid. In 1972, I broke my ankle in the mine. By the time I got a specialist's help, the broken bone fragments had eroded the cartilage, and I've walked on bone on bone since 1972.

I used to run. I can't run any more. I used to climb. I can't do that any more. Dancing is difficult. A hearing aid has no discrimination. A hearing aid picks up the loudest sounds. If you're speaking to your wife and a big truck goes by in the street, you will hear the big truck, not your wife or a little child.

I'm not asking for your sympathy. I don't want your sympathy. But I want to tell you that I'm representative of injured workers. We go to work every day. We don't complain. We don't ask you for anything. What we ask is the right to work and the right to be treated with decency, something that is sadly lacking in this province over the last three years.

Let me return to my brief. I won't read it all. I wanted to welcome you to the southern and eastern edge of the great northwest. Some of you really should get in a car and go and have a look at northern Ontario. North of Kenora, we could take all of southern Ontario and lose it. It would take a satellite to find it. There are workers up there. They get hurt. They'd like to see your faces. They'd like to talk to you. They'd like you to explain to them what it is about Bill 99 that's going to help them.

We have a worker here from Local 950 in Balmertown. She'll speak to you in a moment as an injured worker. We represent miners in Balmertown. It's 600 kilometres to the north and west of us. Yesterday in Balmertown, gasoline was 72.8 cents a litre. Wieners were \$2 a pound, without the bun and without the mustard. You should go up and listen and talk to those people and tell them how they're going to get around after you've cut their compensation. Old Joe Gobles, if he was here, would marvel at your ability to screw workers while at the same time telling them you're doing them a favour.

1540

In 1914 we entered into a social compact in this province. It was very simply put together: You don't sue me, the boss, and I, the boss, will provide for you, the injured worker. For the first time since 1914, we are now making a major assault upon the principles, the underlying pinions of that social compact. You are changing it, and you are

changing it fundamentally. The benefits that emanate from Bill 99 will go to bosses, not to injured workers.

I represent largely, and this union represents largely, miners in the northwest. Mining is a brutal industry. Through a series of small openings on the surface of the ground, men go into the bowels of the earth and they drill and they blast and they crush rocks all day, every day. The rocks are full of silica and arsenic and mercury, to say nothing of the fallout from the explosives. There's radiation, there's insufficient air, there's darkness and dampness; there's too much and too little heat and too much and too little cold. These places are mechanically ventilated. Frequently they don't work as well as they ought to, and sometimes they don't work at all. It is no wonder that men get sick working there.

We had the good sense a number of years ago to put in place something called the Industrial Disease Standards Panel. One of the jobs of that group was to look at and try to prove whether in fact conditions such as they are in mines were contributing to diseases. Thanks to you, you have now shot the messenger. You have outlawed and dispensed with that group of people.

I want just briefly to talk to you about mining companies. You see, Westray was not unusual. What was unusual about Westray was we killed 26 people all at once. Most mines, we kill them one and two at a time. But Westray is more representative of mining than maybe you want to believe. There are wives and children and parents and other relatives looking for answers and closure in Pictou county. Where are the two principals of the mining company? Seeking refuge in the courts. That's how we're going to help injured workers and dead workers: Go to the courts; protect your ass there. If you've got a lot of money, you can do that. If you haven't any money, you'll be shit out of luck.

I have a letter in my possession from 1954, written by a gold miner in Timmins. He was in the tuberculosis sanatorium at Haileybury. He wrote to Buck Behie, who was then the Steel staff rep in Timmins, and he said to Buck Behie: "There are 26 people in here. Twenty-one of them are miners. Where are the shopkeepers and where are the farmers and where are the politicians? They're not here." Your response to that is to get rid of the disease standards panel.

We had a mining master file. When we convinced the government of the day to compensate the widows of gold miners who had died of lung cancer, it wasn't based upon epidemiology; it was based upon the bodies stacking up in front of the mines. It was a public embarrassment. So what have you done? You have destroyed the mining master file, dispensed with it. Now we won't be able to find out what the hell is going on at all. So you've shot the messenger; you've destroyed our ability to reconstruct the message.

We used to have chest surveillance for miners done once a year, more latterly once every two years. In 1996, after you had gotten rid of that group, Battle Mountain



Gold in Marathon contracted with a medical surveillance group out of Hamilton to come in and take X-rays of gold miners. About two months ago, we started to get the results. Nine of them got X-rays that said, "You've got silicosis," or "You've got a non-occupational disease." They went and saw other specialists. One specialist said to one of those 32-year-old miners, "Oh, if you haven't got silicosis, you've got lung cancer."

After further investigation, it turned out there was nothing wrong with any of the nine of them. They were removed from their workplaces and lost money. It cost them money to go and visit medical specialists, to have X-rays taken. We're gratified that these nine are well. Our fear, our suspicion, though, is that there are nine miners out there someplace who aren't well, and we now contract out that service. The mining company tells us, because we're in negotiations, there is no plan at the moment to dispense with that mob.

That is what you have done. You have destroyed the system, and then you come here under the guise of wanting to consult. You're like my drunk uncle: You're a day late and a dollar short. As far as I'm concerned — I hesitate to be vulgar — you can all go to hell in a handbasket.

*Interruption.*

**The Chair:** Excuse me, please.

**Mr Sheppard:** None of you gives a rat's ass about workers, injured or otherwise. That's the fact.

**The Chair:** Excuse me, please. At this point —

**Mr Sheppard:** That's the middle and both ends of that.

**The Chair:** We have had a number of instances of vulgarity. I let the first one slide. The second one I thought, "Well, it wasn't too bad." But I'm going to say right here and now, no more. If this continues —

**Mr Sheppard:** What is vulgar —

**The Chair:** Excuse me. Please allow me to finish. If this continues, I'm simply going to call a recess and we won't continue on. I am not going to sit here and listen to vulgarity and cursing in the afternoon. I'm very happy to hear your opinions, but I will not tolerate that kind of language. Please continue.

**Mr Sheppard:** What is vulgar is what we are doing to injured workers. That's what's vulgar. Marianna Foster is an injured worker. She has a couple of words for you.

**Ms Marianna Foster:** You may find what I have to say not politically correct, or vulgar — not swear words.

My name is Marianna Foster. Who am I? Well, I'm a worker. I'm a mother, a single parent, a crusher operator, a volunteer. I've been certified and mine-rescue trained. I'm captain of the mine first aid team, or I was a long time ago. I'm also a union member of Local 950 of the Steelworkers. I have a diploma in human resources, and I'm also an injured worker. I've been through the system and survived it.

Anybody awake? Just checking.

I've had medical procedures I didn't want, and I've had surgery that scared the hell out of me. I've been forced to

move to Thunder Bay against my will. I had to take my son away from friends and family. Two years later, he still wants to go home. I've been partially paralysed and lost all control of my bladder and bowel functions for a considerable period of time due to my back injury. According to the chamber, that makes me lazy, right? If you ask my employer about me, he'll probably tell you he has a wonderful workplace and I'm just a "bad employee faking it." That's the way I've been made to feel.

I spent six weeks on light duty, stoned on painkillers, staring at a wall for eight hours a day to try and avoid a lost-time accident at my employer's request. I understand it's this committee's intention that I approach this employer hat in hand to grovel for benefits and assistance. Walk a mile in my shoes, friends, and then tell me that is fair. I'm ashamed to be hurt, and I didn't do anything wrong. I ask you, when a drunk driver hits your child, are you required to negotiate with the drunk to receive compensation? When a thief steals the contents of your home, do you have to negotiate your insurance through the thief? Yet a worker must negotiate with his employer for benefits. Is this the common sense I keep hearing about?

"Compensate chronic pain in accordance with guidelines for usual healing time as set out in a regulation." That sounds pretty good. I ask this committee to please inform me what the "usual healing time" for pain and paralysis of your privates is. While you're at it, how about the pricetag you attach to your sex life when you can't feel anything? That's all part of being an injured worker that maybe you don't hear about as often as you should. It's pretty private stuff, eh? Are you surprised to hear me talk about it in public? Not really. I see him raising an eyebrow: "Yeah, so what?" Well, somebody has to talk about this. This bill is about injured workers, not names and numbers. Even if you ignore us, we're not going away. We can't disappear because you deregulate us. Besides, why worry about trying to keep this stuff quiet? With your proposed changes, everybody and their dog will know about my private medical business.

**1550**

While we're talking about private business, how about section 69? That was surely written by a joker, the phrase "submit to a medical exam." Submit? Just in case you forgot, I am a human being. I'll be — ahem — if I will be forced to submit to an exam by someone not of my choosing. That's a little over the line, I'd say. Last time I checked, this is my body, and I believe forcible submission is covered by the Criminal Code. Say, can you lay charges on that one? I wonder.

While we're there, this forcible submission thing you've been talking about is now going to be by a health professional. I looked up the definition because I wasn't sure. A "health professional" is defined as "a member of the college of a health profession as defined in the Regulated Health Professions Act, 1991." Does that mean now you have the right to demand examination by a dentist of my backside? That's the way it reads, and I resent that.

I could go on for several hours about what is wrong with these changes from an injured worker's perspective, but time and dollars rule all, including this public hearing.

The board changed the title of the Workmen's Compensation Board to the Workers' Compensation Board to represent we women in the workplace, and now it's the Workplace Safety and Insurance Act. Is that to represent the employers' needs and wants, to take the worker right out of WCB? That's the way it seems to me.

The mine I worked in is filled with beat-up miners with very little education, but these men are decent and know what's right. I don't believe the parties responsible for these changes are decent or know what is right. I'm not ashamed of being an injured worker any more, and I think you should stop trying to make injured workers ashamed.

My friend Tom Mackensie accepted bad employers and unsafe conditions as part of his job, just like you seem to and just like bad employers seem to. He couldn't be here today because he was killed at work a few years ago. He was decapitated. His friends and his co-workers carried him to the surface. I guess he's one of your statistics.

That's all I have to say. Thank you.

**Mr Sheppard:** If any of you are interested, I have here some pictures of toilets, taken underground at Goldcorp mine in Red Lake. We've been on strike there for 13 months. This might give you some idea of why we're on strike. I'd like you to have a look at this, because you want to give a whole lot of authority under the compensation act back to the employer. Have a look at these pictures and tell me whether you would depend upon this employer to give you anything.

**The Chair:** There are only two minutes remaining for questions. That means we'll go to the NDP caucus only for brief questions and answers.

**Mr Hampton:** Thank you very much, Moe and Marianna. Marianna, I want to direct this question to you, because I think you've brought something here today that may have been missing. You come from a small town and you've literally been forced to move to Thunder Bay. I wonder if you could talk about that, because my sense is that a whole bunch of workers from places like Kenora and Dryden and Sioux Lookout and Geraldton and Longlac and Manitouwadge and Terrace Bay probably have faced the same thing you're facing. Could you tell us why you had to leave?

**Ms Foster:** This isn't actually a female thing; this is a single-parent thing. Under compensation's rules, if you're a divorced or single parent and you want to retrain, you can't get an education in the north. Whether you want to retrain or not, you have to if you can't do your job. The option was that I should move somewhere where I could retrain. I said: "Can't I just retrain and then come home, like the workers who are married? Can't I come home to my own home, with my family, so my son can maybe have visits with my ex-husband like he's supposed to?" The end result was: "No. You're a single parent. You have no right to have any link with your home. You move." On top of

that, at first they said: "We're not paying for your moving expenses. You just go ahead. You're an injured worker. Off you go and move to Thunder Bay." So here we are in Thunder Bay, moved here. Other people can visit home; we're not financed to visit home. If you do it, you do it on your own. But is it fair that I have to give up all ties because I hurt my back, because I had surgery, that now I don't have a home, I have to move? I don't think that anybody could see that as even remotely fair.

**The Chair:** Thank you very much for your presentation this afternoon. We appreciate your taking the time.

## EMPLOYERS' ADVOCACY COUNCIL, NORTHWESTERN CHAPTER

**The Chair:** Calling representatives from the Employers' Advocacy Council, northwestern chapter. Mr Sweica, welcome. You have 20 minutes to make your presentation. You may use it all for a presentation or you may allow time for questions.

**Mr Carmer Sweica:** I would prefer to take this approach, if it's okay with the committee: The presentation as given to you is fairly lengthy and I don't want to go through it all, but I do have some points I would like to bring up and maybe give you some things to think about over and above what we've given in this document. Is that all right with you, Madam Chair?

**The Chair:** You do as you wish.

**Mr Sweica:** First of all, we compliment the government for looking at WCB and making some changes, because they're long-overdue. I would first of all like to give you some idea of my background.

I'm representing the northwestern chapter of EAC, the Employers' Advocacy Council. I'm on their policy committee. I was on their executive for almost 10 years, up till last year. I'm also with COCA. You've heard from COCA, probably, the Council of Ontario Construction Associations. I've been on their WCB committee since 1985, I think it was, and still am. I'm also, and was, director of the CSAO, the Council of Safety Associations of Ontario. I've been on the provincial labour-management committee for quite a number of years. I'm also a past member on the board of directors for WCB, until we were fired in November 1995. I have also been a member of the board of directors on the Workplace Health and Safety Agency. I come here with that background.

As I mentioned, I compliment the government for taking a look at the WCB, its act and what it's going to do, because it has been our feeling, my feeling too, that it's long overdue. There are a lot of things in there that should be corrected.

One of the things is sustainability of the system. This concerned the board members when we were there, that we were going deeper and deeper into the hole. There is roughly \$10 billion difference now of an unfunded liability. Sure, we've got \$8 billion in assets, but we also have liabilities to the extent of almost \$11 billion for future payments to injured workers. That has to be looked after.



If something isn't done to correct the system so that we don't go in the hole every year — except for the last two years where some concentrated effort has been made at the board level to cut back on costs and so on — the system will bankrupt itself.

1600

You know, \$11 billion is a hell of a lot of money, and it concerns us. That's one of the reasons the purpose clause was put in, because it wasn't there before: the accountability for the financial welfare of the system. If we go broke, everybody pays. Under the system being proposed, we're starting to get some moneys back. It's just like in the federal government. You're talking about deficits and the debt. We're trying to get out of this deficit situation, and it's happening. Now we have to attack the debt.

Under the present system, we're paying current claims out of the fund and there is some money left over to go against the unfunded liability. We have to do that on a continual basis. In order to do that, employers have to contribute to this situation as well as the workers. The workers, of course, are being reduced from 90% to 85%. That's one of the reasons for it. I'll leave it at that on that one.

The other one I'd like to address — it's just a moot point, but it might be something for the members of the committee to think about. That's the memorandum of understanding under section 160. I believe and the council believes that it is very important, the type of memorandum of understanding that has developed between the board and the Ministry of Labour. There is one section you might want to look at, and that's subsection 160(3), which says, "The board must give the minister an annual statement of its investment policies and goals."

Something has happened in the last four or five months that makes me question whether that's possible, because now that investment has been taken out of the board and is being directed by outside sources. You all understand that. The investment committee was fired, basically, by the administration of the board. I don't know how that will attach itself to the act. The investment policies and goals: You give it to outside sources, and sure, you can give them some sort of guidelines, but will they go within those guidelines? I have some concerns about that. Maybe you want to address that.

One of the other concerns we have, and it isn't spelled out anywhere in the legislation, is the consultation process. When I was there, we as a bipartite board tried our darnedest to consult with the employer community and with the labour community on any policies coming before the board of directors. We did it, and we tried to keep it as open as possible, because it is a public institution and everybody should be aware of what's going on. The board does not know everything, so some input should come from the labour side, as well as the employer side. I don't know how it's going to be done, whether it's through the memorandum of understanding or whether it's in legisla-

tion or what. But I think a consultation process should be put into effect.

Right now, we don't know what the board is doing. At least we don't, and I don't think the labour side knows. These policies are coming down and nobody knows about it until they're put into effect. There is no consultation. It was relayed to me that somebody from the board indicated that in the past consultation didn't work. I'm sorry, but it did work.

My background is in construction. I've been pushing this construction thing quite a bit at the board level and with the Ministry of Labour. As we all know, construction is a unique industry. We're dealing, basically, with hiring halls, where it's not your employee; it's the employee of the hiring hall. That compounds some problems.

The government realizes that there are some problems here. I believe COCA has addressed that to you on return to work. I was on the 165 committee that tried to develop a return to work for construction workers who were injured. We spent almost two years trying to develop something that didn't work, really. But hopefully, with the proposals now before the minister and this committee, it may work now. I think you should have a good look at that, because the construction industry as a whole would like to see workers return to work as quickly as possible and in a timely fashion.

Three-day waiting period: I know it was in the government's Common Sense Revolution that this three-day waiting period was indicated, but there's nothing in the legislation that says so. The EAC recommends that the three-day waiting period be looked at again, with the exception that the three-day waiting period take effect the day after the accident. In other words, if you're hurt at 3 o'clock in the afternoon, then you get paid for that day, and then you wait another three days. This is basic insurance policy in most cases.

The other thing that bothers me is that there doesn't seem to be a definition for small business, really. This was brought up, I know, when I was at the agency. At the agency, as you know, we were talking about 20 people or about 50 or whatever it was; everybody has a different idea of what small business is and there are definitions all over the place. There's no consistency here.

It would behave this committee to make some recommendations as to what small business is, because we all talk "small business" but nobody seems to define what small business is, how many people, things of that nature. I know the board has different ideas of what small business is. The CFIB has a different idea of what small business is. This legislation mentions 20 people. I know that in occupational health and safety, recommendations will be coming down that small business should be maybe 50 or less. That is another item that should be addressed by the government so there's consistency through all the legislation.

As far as WCAT is concerned, we have no problem with what the government is saying. It's shown on pages

20 and 21. I don't want to go through it, but we like what we're hearing. At the board level, when decisions were made we had a very difficult time trying to resolve some of the situations that came in from WCAT. We didn't want to use a section 93 — that's the old one, I think — where we would have to do a dog-and-pony show. It happened once. It was very costly and time-consuming and is not the way to go. We agree with the government that what it's proposing in Bill 99 should go into effect; in other words, rule on policies, don't make policy.

1610

Another very small item, section 49, where it refers to the CPI, reads:

"...is the amount of the percentage change in the consumer price index for Canada for all items, for the 12-month period ending on October 31...."

Maybe I'm half cocked but I believe there is a CPI for Ontario. Shouldn't they be looking at Ontario? Things change from province to province, as we all know, and cities are more expensive in certain areas, so obviously we should not be looking at Canada. Because we're talking about Ontario's system, we should be talking about an Ontario CPI, not an average Canadian. It could be higher or lower, I don't know, but it's something to think about.

The other thing, and this is my personal opinion: WCB, we're trying to make amendments to it and we're going to try to make amendments to the Ontario Occupational Health and Safety Act. What about putting the two acts together? As we know, the Workplace Health and Safety Agency is under the WCB, preventive, yet Occupational Health and Safety addresses a lot of these problems too, so we have two acts that we're dealing with. Why not combine the two and then you have everything under one roof? Then we have the preventive as well as the other parts of this Occupational Health and Safety Act. That's just another thought.

**The Chair:** I'd just like to let you know there's about one minute left in presentation time.

**Mr Sweica:** The other thing: When a person gets injured and goes to the hospital, the costs run through the system and eventually get back to WCB. My question is: With the hospitals the way they are going nowadays, how do they budget for WCB revenue? I've asked this question of a number of hospital administrators and they said they don't. So it's all gravy. I may be wrong, but it's something to look at.

I was going to bring up some other point that —

**The Chair:** That's actually at the end of your time. As with any other presenter, if you have further thoughts you're always welcome to present them in writing to the members of the committee further on. With that, thank you very much for your presentation. We appreciate your taking the time and lending your advice to us.

## ONTARIO PUBLIC SERVICE EMPLOYEES' UNION

**The Chair:** I'd like to now call upon representatives from OPSEU, Pat Shearer and Peter Lang. Good afternoon and welcome.

**Ms Pat Shearer:** My name is Pat Shearer and I'm with OPSEU. I'd like to introduce my co-worker Peter Lang, who is also with OPSEU.

Once again the Ontario government is showing its true colours. In its ongoing assault on fairness and decency for working people and their families it is gutting every piece of legislation that protects us. Make no mistake, Bill 99 is part of that shameful legacy.

Bill 99 will slash the benefits of injured workers. It will cut their entitlement to fair compensation for injuries inflicted on them at work. At the same time it gives enormous arbitrary power over injured workers to employers. It transfers billions of dollars in compensation money that belongs to injured workers to the treasuries of their employers.

OPSEU members are appalled by this government's attempt to ram this legislation through the Legislature without full public debate. On their behalf, our union comes before the committee in protest. It's clear to us that we no longer have a democratic government in Ontario. This is not a government which governs in the interests of the greater public good. This is a government that rules the many in the interests of the few.

Democratic government is about consultation, it's about ensuring the people have a voice in decisions that affect their lives and it's about balance and fairness. Such lack of openness only reflects this government's contempt for the public and its real fear that an open debate blows its cover of deception. Have no doubt about it, this proposed legislation and the government's media spin are about deceit and deception.

In the expectation that if you tell a big lie often enough, people will eventually believe it, the government has portrayed this legislation in a number of ways. Employers and the government have deceived the public into believing that Ontario's compensation system is in a financial crisis and that employer premiums were placing us at a competitive disadvantage. They have also engaged in the worst form of victim-blaming by portraying injured workers as an overcompensated, lazy lot living off the system who are probably faking their injuries. They blame injured workers for the WCB's fictitious financial crisis and its impact on our economy. But nothing could be further from the truth.

In truth, the board is not in debt and has not had to borrow a dime in its 80-year history. This is a corporation that showed a \$510-million profit in 1995, has \$8 billion in assets and has a funding ratio that has steadily risen to 42% of its future liabilities. In truth, Ontario's employers enjoy WCB premiums which are lower than two thirds of North American jurisdictions. In fact, if employers were paying what they should have and if all employers in the



province were paying into the fund, there would be no unfunded liability at all.

The truth is that Bill 99 is not about a financial crisis, it is not about positive social change and it is certainly not about prevention. So what is Bill 99 really about? It's about allowing employers to get away with not living up to their responsibilities for the injury and disease they cause; it's about rewarding them with rate reductions at the expense of their workers' benefits and entitlements; and it's about offloading the real cost of workplace carnage on to the taxpayers.

Just where do you think these human beings will go when they cannot work or when their benefits are so reduced that they will be unable to provide the barest necessities of life for themselves and their families? I'll tell you where they'll go. They'll wind up on the welfare rolls, in the psychiatric wards, on the streets and in our jails, and it's the taxpaying citizens of Ontario who will pick up the cost of these services and the resulting social problems. The savings from these efficiencies are a deception. The only people to benefit from this legislation are the employers who are being let off the hook for the injuries and disease they cause in the workplace. It is they who will gain billions of dollars from the transfer of this compensation money.

Bill 99 breaks the historic compromise made by workers and employers in 1914. Workers gave up their right to sue their employers for work-related injuries in return for a no-fault system that gave them the right to full compensation for injuries suffered at work. Employers, for their part, were protected from any legal liability for workplace accidents and diseases in exchange for fully funding the cost of this system. But with Bill 99 that historic compromise between worker and employer is dead and buried.

The Conservative government has come down firmly on the side of the employer. Bill 99 will deny workers' rights, suppress claims, limit compensation and gut fairness in order to relieve employers of their obligations and reward them with rate reductions. Under Bill 99 workers' benefits are under attack from all angles. Benefits will be reduced from 90% of a worker's loss of earnings to 85%. Pension contributions for workers with permanent disabilities will be cut in half, so injured workers are more likely to be impoverished in their old age.

1620

The board will have a new discretion to reduce a worker's benefit on the basis of his or her pattern of employment. Seasonal workers will receive lower benefits regardless of their true loss of earning capacity. OPSEU represents these seasonal workers, from provincial park rangers to food inspectors. On behalf of those members we are strongly opposed to this attack on their right to full compensation for work-related injuries.

By removing the definition of "earnings and wages," Bill 99 gives the board expanded discretion to undervalue workers' pre-accident earnings. Non-monetary forms of remuneration will not necessarily be counted in deter-

mining a worker's loss of earnings. The board will be free to ignore such items as employer-paid long-term disability premiums, pension supplements and meals provided by the employer.

The most significant attack on the injured worker's right to full compensation in Bill 99 is de-indexing. In the mid-1970's the Conservative government recognized that without inflation, protection for the real value of injured workers' benefits was being driven into the ground. They began increasing pensions on an ad hoc basis with reference to the consumer price index, and in 1985 enshrined full indexation in the Worker's Compensation Act.

While Bill 99 continues full indexing for workers with 100% disability awards, it removes full protection for workers injured before 1990 who receive a special supplement because they are permanently unemployable and their benefits unjustifiably low. Bill 99 slashes inflation protection for most workers with permanent disabilities. Many of these workers rely on partial pensions to support themselves and their families. While the change in the indexing formula may appear slight on paper, its impact on the workers will be cumulative and severe.

The Jackson report projected that this change alone would deliver over \$9 billion in savings in the next 17 years. Minister Witmer has been clear that the purpose of this cut is to reduce the unfunded liability. In other words, this government is stealing \$9 billion from the pockets of injured workers and using it to cover the cost of insufficient employer assessments. As if this were not enough, the government gives employers a 5% across-the-board rate reduction, which transfers even more compensation money to employers and will only prolong the unfunded liability.

The proposed Workplace Safety and Insurance Act is particularly vicious in its attack on workers who suffer from stress and chronic pain disabilities. Under the act, these workers are treated with suspicion and disrespect. Their rights to compensation are limited or completely denied regardless of the real merits and justice of their claim. Stress is a serious occupational hazard which can cause very real temporary or permanent disabilities. OPSEU represents many of the workers in Ontario who are most at risk for stress and related injuries.

Workers in psychiatric hospitals and correctional facilities face dangerously high levels of stress as a result of understaffing, overcrowding, insufficient training, shift work; and hostile atmospheres, including harassment and violent assaults by patients and inmates. Workers in ambulance services who have to deal with enormous human suffering and mangled bodies and corpses are in a constant race to save people's lives and work long and irregular shifts.

Under Bill 99, if these workers suffer injuries related to the hazardous levels of stress on the job, they will be denied compensation out of hand without regard to the facts or available medical evidence in their cases. The only exception applies to workers who suffer from an acute reac-

tion to a sudden, unexpected traumatic event. This is an extremely narrow and complex exception. There is no guarantee that workers in psychiatric hospitals, correctional facilities or ambulance services won't be denied on the basis that they must expect traumatic events in the course of their employment.

Even if workers manage to jump this severe legal hurdle, their claims will be denied if their stress was caused by their employer's decisions or actions relating to the worker's employment. This would include assignments, conditions of work, discipline and termination, nearly all the things that cause them stress in the first place. In addition, workers who suffer from stress-related illnesses as a result of sexual or racial harassment by their employer will be denied any compensation.

Workers who suffer from disabling chronic pain syndrome will be at the mercy of arbitrary board regulations. Under the proposed scheme, workers who do not heal within the so-called "usual" time for their injury will be dumped into a pain management program for a maximum of four weeks. Following their participation in the board's quick-fix pain clinic, they will be denied any compensation for health care costs or their loss of earnings. Some workers won't qualify for the four-week program; their benefits can be terminated immediately upon reaching the usual healing time for their injury.

Chronic pain syndrome is a medically recognized condition which can be traced to the original workplace injury. Frequently the result of soft tissue and repetitive strain injuries, it is affecting a growing number of workers. Women are particularly vulnerable to these injuries due to their concentration in small-scale manufacturing and office work.

The suffering of these injured workers is real whether the government recognizes it or not. Chronic pain can leave workers barely able to move, to sleep, to take care of their children, their homes and it often leads to severe depression and family breakdown. If the government gives employers a free ride on their responsibility for these workers, the taxpayer will end up with the bill through welfare.

While Bill 99 limits or excludes the claims of workers with mental stress and chronic pain disabilities, it does nothing to restore their right to sue their employer. For these workers, the historic bargaining of workers' compensation is dead. They have no right to sue and no right to full compensation. The provisions of Bill 99 on mental stress and chronic pain are clearly unconstitutional. Bill 99 singles out workers with mental stress and chronic pain disorders for special limits and exclusions. It discriminates against them as compared to people with other disabilities. In passing this legislation, the government is therefore inviting costly and unnecessary litigation at taxpayer expense.

Bill 99 makes it harder for workers to start claims and easier for employers to suppress them. Workers will have to initiate claims using a form available from their em-

ployer. This gives employers more opportunities to coax or threaten workers out of making a claim. Experience rating provides a proven incentive to manipulate statistics by suppressing claims. The fewer accidents reported, the larger the employer's experience-rating kickback.

Unorganized workers, workers with language barriers and workers with literacy problems will be severely disadvantaged by the requirement to seek out and complete written forms in English. The current system of allowing doctors to initiate claims is a far more effective way of ensuring that an injured worker will be connected with the compensation system.

There is no justification for the introduction of a six-month time limit for making claims. Under Bill 99, hundreds of injured workers with valid claims may be denied benefits on the basis of an arbitrary rule every year. Workers who fail to report an accident because of employer harassment, including fear of dismissal, will be shut out; workers who tough it out despite the pain, because they are dedicated to their jobs, will be shut out; workers with complex injuries and occupational diseases that take time to diagnose and connect to the workplace will be shut out; and workers who don't know their rights because they are unorganized, or because they face language and cultural barriers, will be shut out.

#### 1630

As with many other provisions in the Workplace Safety and Insurance Act, the 6-month time limit will reduce claims without reducing accidents. The proposed act is a government shell game aimed to create the illusion of a safe workplace by ignoring the suffering of injured workers.

Minister Witmer claims that the proposed Workplace Safety and Insurance Act promotes a timely and safe return to work. In truth, the act encourages employer harassment and coercion of injured workers to return to work before they have healed. This will inevitably result in serious aggravations and re-injuries.

Under Bill 99, injured workers and their employers are required to establish immediate and continuous contact following an accident. Rather than encouraging productive communication, workers fear that this will provide employers with an excuse to harass them and their families at home while they recover.

The act requires employers to arrange for the worker to return to suitable work as quickly as possible. The decision as to what constitutes suitable work will rest entirely in the hands of the employer. Their only guidance will be a single-page functional abilities form completed by the worker's physician. Employers may order workers to return too quickly or to an inappropriate and dangerous job. Workers must cooperate with their employer's demands or risk losing their benefits.

Experience rating provides an incentive for employers to abuse their expanded control over the return to work. Employers who limit their lost time claims by pushing workers back on the job, whether it be to work that is too



strenuous or to pointless make-work tasks, will be rewarded with larger experience rating kickbacks.

All this will happen without the board's involvement or supervision. Only after a dispute arises will the board interfere, and by then it will be too late for the workers, who will inevitably suffer re-injuries and aggravations as a result of the employer's abuses and the board's neglect.

Finally, our members are not taken in by the minister's commitment to make Ontario's workplaces among the safest in the world. How could we be? Everything we have witnessed so far shows the government is intent on destroying our whole health care legacy.

It is difficult, if not impossible, to accept these verbal commitments as a true reflection of the government's motives and intentions in view of the fact that the ministry recently reduced health and safety certification training requirements; gutted the Ministry of Labour's occupational health program by laying off occupational health nurses and physicians, industrial hygienists, engineers and all the technicians and speciality staff; closed the occupational health laboratory and library; and disbanded the toxic substance standard-setting committee.

These initiatives have reduced the ministry's capacity to effectively administer and enforce the Occupational Health and Safety Act and drive prevention programs.

More recently, the minister introduced her discussion paper for an overhaul of the Occupational Health and Safety Act that contemplates massive deregulation of protective standards, relieves employers of their specific duties to protect workers and abolishes many of the protective rights workers now enjoy.

In connection with the changes proposed in Bill 99, we can only conclude that the government and its supporters in the employer community see workers as expendable Canadians, for in truth these legislative initiatives are a licence to kill and maim workers.

On behalf of the members of the Ontario Public Service Employees' Union, we call on the government to withdraw the Workplace Safety and Insurance Act immediately.

**The Chair:** Thank you for your presentation. Unfortunately, there is no time for questions.

#### DRYDEN AND DISTRICT INJURED WORKERS' SUPPORT GROUP

**The Chair:** I'd like to now call upon representatives from the Dryden and District Injured Workers' Support Group, please. I believe it's Mr Bourré. Good afternoon.

**Mr Art Bourré:** We appreciate the opportunity to appear before the committee. We're not here on an adversarial note and you'll probably see it from our submission. We're here to present our concerns and it's only fair to tell you that I and my colleague wear two hats.

I am the chairman of the Dryden and District Injured Workers' Support Group, which represents both unionized and non-union injured workers' groups. I am also the

worker compensation rep for my local of the International Brotherhood of Electrical Workers.

**Mr Ed Gibbins:** I'm Ed Gibbins. I also belong to the Dryden chapter of the injured workers' group, yet I'm here because of the Communications, Energy and Paperworkers Union, Local 105, for Avenor in Dryden. That's why we have two submissions.

**Mr Bourré:** I will try to go through this as fast as possible without rushing anybody, and I would like to start with the introduction.

This submission represents the collective views and concerns of the members of the Dryden and District Injured Workers' Support Group on the proposed changes to the Workers' Compensation Act contained in the Workers' Compensation Reform Act, 1996.

The Dryden and District Injured Workers' Support Group has long held the view that a revamping of the Workers' Compensation Act is long overdue, and is therefore not opposed to change. The group is, however, opposed to change just for the sake of change, and to change that is unilateral in concept, benefit and delivery.

The concerns of the Dryden and District Injured Workers' Support Group are generated from the following sources: New Directions for Workers' Compensation Reform, report of the Honourable Cam Jackson, minister without portfolio responsible for workers' compensation reform; Workers' Compensation Reform Act, 1996; Workers' Compensation Board's delivery of service, past and present; hands-on experience of our group with the board and government.

No one gains when an act is prejudicial towards a particular group, whether it be employers or workers. It is therefore the consensus of the Dryden and District Injured Workers' Support Group that any reform that takes place must be fair to all stakeholders. In order for that to occur, all stakeholders must be consulted and have an active and meaningful role in the forming of a new act.

The lack of resources allows for our submission to focus only on what we consider to be the most important areas of reform and the most serious defects of the proposed Bill 99. It is with this in mind that the Dryden and District Injured Workers' Support Group makes this submission.

New Directions for Workers' Compensation Reform: The report of the Honourable Cam Jackson, Minister without Portfolio responsible for workers' compensation reform, starts with the introduction:

"This report represents the findings and directions resulting from the comprehensive review of the workers' compensation system conducted by the Honourable Cam Jackson, Minister without Portfolio responsible for workers' compensation reform. The report delivers a reform package that will fundamentally reshape Ontario's workers' compensation system and the role the workplace parties play within the system. Based on Minister Jackson's findings, these reforms will preserve fair and secure benefits for the injured workers of today and tomorrow by

eliminating the unfunded liability by the year 2014 and restoring the financial viability of the Workers' Compensation Board (the WCB); streamlining administration and significantly improving service delivery for workers and employers; and refocusing the system to encourage worker and employer self-reliance.

"At the same time, these reforms will allow the government to remove significant barriers to job creation and economic competitiveness by keeping its commitment to lower WCB assessment rates.

"The report is divided into three broad sections. Each section provides a brief analysis of problems, summarizes the feedback from the consultation process and recommends new directions for the workers' compensation system."

**1640**

The goals the Honourable Cam Jackson promises will be achieved by implementing the reforms he suggests are very noble indeed. There is, however, a very fundamental flaw. The changes recommended by the Honourable Cam Jackson are designed to achieve, almost uniformly, the exact opposite result to what are stated as his goals.

The Honourable Cam Jackson claims that his study is comprehensive, all-encompassing, but on examination one can find little evidence of that being the case. There is, however, ample evidence to the contrary. This in itself severely damages the credibility of the report.

There is only one stated goal in the report that will be served by the changes to the workers' compensation system in Ontario recommended by the Honourable Cam Jackson. It is the government's commitment to lower WCB rates. Nowhere in this report can be found an increased benefit to injured workers in Ontario. Significant loss of benefits and service delivery to injured workers can be found throughout.

The Honourable Cam Jackson makes it clear in his report that he has little or no understanding of the problems faced by the injured workers of Ontario in dealing with the present compensation system. The Honourable Mr Jackson has instead recommended increasing the number of obstacles facing the injured workers of Ontario in accessing fair and secure benefits.

**Unfunded liability:** The Honourable Cam Jackson has identified the unfunded liability of the Workers' Compensation Board as being the most pressing problem facing the viability of the workers' compensation system in Ontario. The keys to this problem are the words "unfunded liability." What constitutes an unfunded liability? In fact all accountants have problems in identifying liabilities and assets, especially if they are projected or possible future liabilities or assets. How they are determined, as a rule, is from where you sit and what picture you wish to paint the situation.

The next problem faced in examining this report is to determine the position of the Honourable Cam Jackson and what picture he is trying to paint. The key to this can be found in the Report to the Workers' Compensation Sec-

retariat on the Financial Position and Funding Strategy of the Workers' Compensation Board of Ontario prepared by William M. Mercer Ltd, 161 Bay Street, PO Box 501, Toronto, Ontario, M5J 2S5, dated January 26, 1996, and this is included in the Honourable Cam Jackson's report.

The picture the Honourable Cam Jackson is trying to paint can be viewed and evaluated in the first paragraphs of the executive summary of the above report:

"The terms of reference for this actuarial report include an evaluation of the current funding strategy used by the Ontario Workers' Compensation Board. The purpose of this strategy is to pre-fund the cost of new injuries, cover current administrative costs and amortize the existing unfunded liability.

"An illustration demonstrates that, in theory, the unfunded liability can be liquidated by determining an amortization payment that is expressed as a level percentage of increasing payroll as is done currently. However, in practice, several of the critical underlying assumptions probably will not be realized with the result that a significant unfunded liability will remain in the year 2014."

This is an admission that the Workers' Compensation Board is on the right track with their funding strategy; in theory, that is. However, if you read further, the words "probably will not be realized" is just theory also. This is not a hard and fast statement of irrefutable fact.

We are now back at the problem of identifying the picture the Honourable Cam Jackson is trying to paint. It is now very clear. The intent is to create an illusion of a financial crisis that does not exist.

Streamlining administration and significantly improving service delivery for workers and employers: Streamlining administration and improving service delivery has long been a goal of injured workers, but so far it has been, in reality, only a dream. The changes recommended by the Honourable Cam Jackson make that more than a dream now; it can now legitimately claim the honour of being called a pipedream.

This submission can only use the collective experience of the members of the Dryden and District Injured Workers' Support Group as to the delivery of services by the Workers' Compensation Board of Ontario. Primarily this is the Thunder Bay office as it is the office of initial contact.

On the whole, once a claim is submitted, the response is quite fast. It is in the latter stages of a claim that most problems are encountered. It is only fair to say that not all claims encounter problems and that the areas encountered are not the same for every claim. It is also fair to say that not all problems are the fault of the Workers' Compensation Board. Our group has identified the lack of understanding of the mandate of the Workers' Compensation Board and how it functions in carrying out that mandate as the chief problem in the processing of claims and the delivery of services. It has been our experience that injured workers are not alone, that many Workers' Compensation Board employees have the same problem.



Another problem is one of personalities. How well a claim is handled can be the result of the luck of the draw. How the claims adjudicator views injured workers can play a significant role in the processing of a claim and the delivery of services. It is a credit to the board that this happens only in a small number of cases; however, to the claimant it can become a problem of monumental proportions and can have very tragic consequences. We have experienced suicides because of this, so we do mean tragic.

There is another fundamental reason why we find little fault with the front-line workers employed by the WCB. One of the first truths that is taught in business administration and human resources management is that how an organization deals with the public, its customers — in other words, the method and policies it uses to conduct its business — is formed and is a direct reflection of the attitude at the top of the corporate structure which then trickles to the bottom.

Another group that has a significant effect on the processing of claims and can be a major point of contention is the medical profession. The problem here is that doctors are overworked and resent having to fill out the myriad of forms facing them from the Workers' Compensation Board. Physicians fill out forms in the briefest of terms, resulting in incomplete documentation of the injury. This, in many cases, has little or no immediate impact on the claim but can have major ramifications for the claimant as he or she grows older and the injury more troublesome.

Another problem area is in the return-to-work and vocational rehabilitation process. This is proving to be a major problem for the injured worker and has the potential to be a major source of unloading service delivery and liability upon the municipalities.

Injured workers have experienced very poor service delivery in vocational rehabilitation and increased harassment on the part of employers. Many are being pushed into training for vocations for which they have little or no aptitude and for which there is little or no prospect for work. The result of this is that the injured worker, once a productive, proud member of society, is left with little or no compensation, on welfare, living below the poverty line. When this happens, the liability has effectively been downloaded to the community which has no mandate or ability to pre-fund this liability.

When it comes to the delivery of service, we see opportunities for abuse increase with every amendment we read. Injured workers are almost always the recipients of abuse in the system. We know collectively the abuses of the system, who the abusers are and how they carry out their abuse. We have no more love for a worker who abuses the system than for an employer or a WCB worker who abuses the system. We have even more contempt for a process that totally ignores us, the largest single stakeholder group, in having the unmitigated gall to declare that they know better than we do what is best for us.

The Dryden and District Injured Workers' Support Group is concerned about this report and proposed legislation, because although we see occasional reference to injured workers, we see little or no evidence that the concerns of these injured workers are being addressed. An area may be jointly identified, but the solution does little or nothing to obtain a joint resolution.

New directions? Old directions? No directions? The Honourable Cam Jackson outlines in his report what he considers to be new directions. There are new directions, but they are not what he identifies. We find them to be practices and policies already in use by the employers and WCB. What the new act does is legitimize these practices and what we consider, in many cases, corporate abuse of the present system. We will first deal with the Honourable Cam Jackson's new directions and then we will identify what we consider to be the real new directions.

#### 1650

Requiring workers to apply for compensation is not new. What is new is the wording. Workers have always had to report injuries and fill out a report before the claim process was started. The worker was always required to make the initial step. What is new is the fact that WCB can now choose to ignore compensable injuries until the injured worker directly applies for benefits. This does not require workplace parties to assume greater responsibility for the compensation process. It places greater responsibility on one party only: the injured worker. It is worthy to note here that this places the worker in greater danger of intimidation from the employer than do the present existing conditions.

Direct payment is not a new concept and is commonly found in labour agreements. The duration varies, but it is not uncommon for the period of direct payments and benefits to extend for a period of one year. Under most labour agreements for direct payment, there is no reduction in pay or benefit. Placing the level of pay at WCB levels is an immediate reduction in wages and benefits as compared to most labour agreements.

Six weeks is a relatively short period and will do next to nothing towards maintaining the workplace connection and re-employment, which is the stated goal. A period of one year would be more credible in achieving the stated goals.

**The Chair:** Excuse me. I should let you know that you have about a minute left in your presentation time.

**Mr Bourré:** I'll move on to what we figure the new direction is. Perhaps the most important is the introduction of private insurance. The door is being opened for a take-over by the private insurance sector, which even the employers are sceptical of. One only has to look at the American experience to realize that this will only increase the employers' and injured workers' costs. This will facilitate the need for every worker to carry private insurance to cover the areas that the employer's insurance will not cover.

Private insurance is always tailored to the purchaser's specifications and is noted not for what it covers but for what it does not cover. The intimidation, harassment and stalling tactics of private insurance companies are commonly known to all workers, and it is not a reputation founded on myth.

If you look at our submission, we have conclusions and we have solutions. Our primary solution — you can find it in the executive summary — is that we're proposing that a judiciary commission be set up to do the bargaining process, because we feel this is the only fair way to do it for every party in this process. We would like to see that outside influences, such as political and insurance companies and things like that, that don't have a stake in the process, other than commercial gain — we figure this is the only place in Canada where we have an autonomous group we can trust. It's worthy to note that even some of the judges now are beginning to feel that they're threatened.

We ask that you take a look. We placed three solutions. We have Bill 99 as not being a solution because we find it too greatly flawed to consider, and that's not only our case. If you read our report, we consider this is a real threat to small business too.

**The Chair:** Thank you very much. You have a thoughtful report here and I'm sure committee members will take the time to read it through carefully. I appreciate your taking the time this afternoon.

#### ERNEST CRAIK

**The Chair:** I now call Mr Ernest Craik. Good afternoon, sir, and welcome.

**Mr Ernest Craik:** Thank you. I am very happy to be here. As you'll note on my cover page, this was intended to be submitted as just a written submission, because I hadn't received presenter status. Thanks to the work of the Injured Workers Resource Centre here in Thunder Bay, yesterday afternoon at 1:20 pm it was confirmed that I would get this slot today. I have 27 pages here; I assure you that I have no intention of covering the last two sections at all.

I am not associated with the Kenora Community Legal Clinic officially, but you will find a past association with the clinic, and you'll find some of my past history. I'm going to skip over parts of these first two pages because I want to leave some time for questions. I'm going to go down to about the third paragraph on the first page.

Before I go into detail on my opinion of the proposed repeal of the current Workers' Compensation Act and its replacement, I want to offer some information on my work as an injured workers' advocate. It has been my experience that most union locals in this area of northwestern Ontario seem to be far too reluctant in helping injured workers who experience difficulty with a WCB claim. A number of years ago, when the union I had membership in refused to help one of its members with a disputed claim, I determined that I would do everything within my power to prove that the reluctance to provide help was morally

wrong and contrary to trade union principles. It wasn't long until I had enough support from my fellow members to have the policy changed. As often happens in successful but not necessarily popular campaigns, I was assigned the responsibility of providing the help. It wasn't an onerous task, because most of the injuries were minor and accepted as work-related by the employer or covered up through a modified work program. It was the more serious type that left the worker with a permanent disability that created problems.

In 1989, after having worked 42 years in the forest products industry in Ontario — 10 years in pulpwood logging and 32 years in a paper mill — I retired from paid employment. It was three months short of my 65th birthday. Prior to my retirement I had determined that I wanted to become a volunteer worker in the community. I had the hospital in mind, but I wasn't very successful persuading them to implement a program. When the Kenora Community Legal Clinic — this is where they come into the picture; that's an Ontario legal aid clinic — learned that I had some experience, they persuaded me to join the staff and assist their lawyer there. There was a great backlog, a number of WCB cases. There was a contract of service drawn up, approved by the Toronto office of the Ontario legal aid plan, and I was to be paid \$1 a year.

It was in the fall of 1989 that the lawyer took very ill and there was some question if she would ever return to work. The position was put to me, would I be willing to take all the legal clinic's compensation casework from that point on? If I wasn't, the clinic would discontinue providing that service. I took on this task and it became very steady employment for the next five or five and a half years, assisting the industrially disabled. It also gave me access to a lot of information I wouldn't normally have had.

In March 1995 I tendered my resignation from this employment. Actually, not only the legal clinic, but the Injured Workers Support Group had been formed in Kenora. I was secretary-treasurer but also did all their compensation casework, which found me working 50 hours, often more, in a week. As I said, the legal aid plan was getting good value for its dollar a year, no question about it. Now I want to get into the act a little bit.

Does the minister's proposed legislation offer me new hope? I regret to say it doesn't. It is far from what is needed in our modern and complex society.

The figures I've seen recently indicate that 30% or more of the workers in Ontario are not covered under the current act, and I do not see anything in the minister's proposal to make coverage universal. The nature of work is changing. The once so-called safe work, ie, banking, insurance, veterinary clinics and some types of entertainment, are still exempt from compulsory coverage, yet the repetitive nature of much of this work is causing disabilities.

The minister insists that the proposed new legislation will put a far greater emphasis on prevention, and cer-



taining this is a desirable objective endorsed by all. It is also one that has great potential, but it is not an end in itself.

One of my most stressful cases for both the worker and myself of bureaucratic bungling concerned a seasonal part-time tree nursery worker whose bilateral carpal tunnel syndrome condition took three years to be recognized as compensable and an additional two years to have the hearing officer's decision implemented. Reform is needed.

1700

The Workers' Compensation Appeals Tribunal has an ongoing bank employee's appeal that it at first felt it had to deny, since bank employees are not compulsorily covered under the current act; it couldn't propose any solution. When a Supreme Court of Canada case came to its attention, offering solutions for resolving cases brought under the Charter of Rights, the tribunal panel agreed to reconsider its original decision. If a final decision has been reached in this unusual case, it hasn't come to my attention.

The minister's proposed legislation is no help in this area. It will restrict the rights of the appeals tribunal to be independently minded. The most charitable way I can think of to express my displeasure with this part of Bill 99 is to call this a regressive step. In my opinion, it will do nothing in the area of prevention.

I was a subscriber to the provincial Hansard from 1968 to 1995. During that long period of time, there was very little said in the Legislature and standing committees that dealt with workers' compensation issues that I missed reading. In a separate purchase, I obtained all but the final two or three issues of the standing committee debate on Bill 165. At the time, the current Minister of Labour was the opposition critic on that committee. As I read the debate — and I read them not day to day; I read them all one after the other, after the debate had all taken place — I wondered what kind of advice she was getting as critic from her advisers. She seemed to have a lack of understanding of what workers' compensation is all about. After studying Bill 99, I still feel that way.

When the Royal Commission on Workers' Compensation was abolished, I wrote the Honourable Cam Jackson, Minister without Portfolio responsible for workers' compensation reform. In my letter, I went into some detail on how I felt the system could be improved, not only provincially but nationally as well.

A copy of my letter, along with Mr Jackson's brief response and the Minister of Labour's more detailed response, are attached to this submission. I have no intention of going into it, because it's quite repetitive. The Jackson letter is a very long letter. A lot of the stuff in that letter is in this, but it's part of the submission to you people.

There is one issue I want to emphasize. I don't know how many people are familiar with Terrence G. Ison. Here is a proposal not only for compensation systems for injury or disease provincially, but a blueprint for a national plan, and that is what I'm here promoting today. Three years

ago, he published — I've gone into some detail in my Jackson letter. There is the solution, not Bill 99. As I said in here, he offers sensible long-term solutions to a problem that has been with us for a long time and which, in my opinion, Bill 99 doesn't even begin to address.

With the views I've just expressed, there's little point in my going into much detail on the 13 sections contained in Bill 99. In many areas it merely repeats what is already in the existing act.

I share to some small extent the minister's concern with the actuarial debt. This is due in part to my personal lifestyle. I've never had a credit card of any kind, and except for one short-term loan, six months, of \$1,000, I've never personally used borrowed money, so I'm not one of these who out and say, "We'll borrow it."

I take some encouragement from two recent WCB annual financial statements that show the actuarial debt declining. I certainly do not endorse the minister's proposal to reduce the benefit rate. A better alternative would be to collect the assessed rate from all employers and expand coverage to 100% of the workforce.

Also, NEER should be abolished. That revenue-neutral penalties will offset? Well, certainly not according to the annual report. The penalties are certainly not offsetting the income. A better alternative, as I said, is to collect the 100%. My experience in the workplace did nothing to convince me that NEER was effective in reducing the number of industrial injuries.

What I saw was the coverup of a lot of minor injuries — the term I often used with my employer was Water-gating, a very offensive term — and some not so minor. This was done through gimmickry: offer a prize to individuals, groups or the whole plant. The group plan seemed to be the most effective — more direct peer pressure — for operating for a period of time without a lost-time WCB claim. The rewards varied: individual certificates of commendation, write-ups in the company's news media, free meals for the workers, and sometimes members of the families were included. Suitably crested jackets were very popular.

This discouraged, in many cases, the reporting of injuries. If the injury was serious enough that it couldn't be hidden, there was always light-duty work to fall back on. The light-duty work often provided the opportunity to get some much-needed training. While there was a cost to the employer, it would be more than offset with the NEER rebate received. While the NEER program is supposed to be revenue-neutral, it certainly isn't showing up that way in the board's financial statements.

What's in a name? I just want to relate a very brief item. I was representing a worker four or five years ago with a hearings officer. While I was waiting for my appeal, I was invited by the office of the worker adviser to sit as an observer on one of their appeals. It was a very emotional appeal. It was a rather elderly lady worker, but it was also a very small husband-and-wife business; the wife was there representing the business. There were

many adjournments to calm emotions — a very sensitive hearings officer, one of the most remarkable people I've met at the WCB. If tears will work for the worker, obviously the employer tried that route too. But the hearing officer pointed out to her at one point: "I'm here to be as fair and impartial and neutral as it's humanly possible to be, and that's my role, but I tell you, if it comes that I have to lean one way or the other, I'm leaning towards the worker. It's called the Workers' Compensation Act for a reason." Don't forget that. I always appreciated that.

Any improvement to improve prevention I'll believe when I see it, and I would love to be proved wrong on that point. I would love to see the accident rate legitimately go down, not through coverups, not through Watergating.

The word "insurance" doesn't impress me. Insurance against what? In my opinion, and you've heard it often today from presenters, it's another step along the way in the current government's drive to privatize everything possible. The late Eugene Forsey made this assessment of the word privatization: "Just a fancy name for the biggest international romp by the rich for skinning the poor."

A brief study of the United States system of compensation for industrial injuries doesn't encourage me to believe private sector coverage is the way to go. The public sector plan in Ontario, even with all its bungling bureaucrats, is far superior.

I go through a litany of grievances that I point out. I want to, at this time of the night — it's late. We've had a long day and I'm a long way from home. You people are a long way from home too. I realize that.

But I want to again emphasize this book. Study it. This is what we need. We need to withdraw Bill 99. This isn't going to be easy. This is why I've included in the back — I'm not a great admirer of insurance companies, but I think this person at the National Conference on Disability and Work probably did us a service: "Is it Time for 24-hour Disability Coverage?" This is an insurance company representative, and of course they would love to get in on providing the coverage. He points out some of the obstacles that I'm aware we face.

I was in New Zealand in 1993 on a vacation tour and did over 100 interviews on the streets of New Zealand. They have a universal no-fault plan for injuries only. I heard lots of criticism, but I heard far more praise. They don't want to abolish it, as I point out in my letter to Cam Jackson. They want to improve on it and include sickness.

Anyway, let's close on a lighter note, about this writer of a short, light article a few years ago who noted how times change, or do they? He hurled us into the future to the year 5981. He was writing in a church journal and noted some major changes in our Christian faith. There was a light discussion of the form of one church government in particular. However, nothing could be proven about its past due to the great computer breakdown in the year 3406 AD. He noted: "By that year all historical knowledge was obliterated. Since books had long ago be-

come extinct, events prior to 3406 AD became a matter of conjecture."

He observed that the post office department still had problems delivering the mail. A look in on the House of Commons showed that the constitutional debate continued. A speaker was on his feet earnestly imploring the House not to take precipitous action. He warns of the divisive character of such a move and asks: "Why not try just once more to get unanimous agreement from the premiers? After all, having waited this long, surely we can wait just a little longer." How times change. Actually, not very much, with the conclusion of this bit of light reading.

#### 1710

If we continue on the road proposed by the Minister of Labour in Bill 99, we could very well in the year 5891 AD find the Legislative Assembly of Ontario still debating workers' compensation reform. On the other hand, if we made a serious effort at putting into legislative form the proposals put forth by Terrence G. Ison, I'm certain that common sense would prevail throughout the land and we would have a system to care for all the injured, disabled and diseased in a humane and caring way, and the subject, along with the \$10-billion deficit, could be laid to rest long before the year 5891.

At that point, I conclude my formal remarks. I'm trusting you to read all this other stuff in here.

**The Chair:** There's just enough time remaining for questioning from one caucus, so it will be the turn of the government caucus at this point for questions.

**Mr Maves:** Thank you very much. I appreciate your coming forward and taking the time to make your presentation.

Your comments on the NEER program: I did some consultations on the Occupational Health and Safety Act. I've actually heard from some people on the labour side who have said that this in many cases has helped the employer to realize the importance of health and safety, that it can mean a great deal to an employer's bottom line, and that it had them pay more attention to health and safety. If you didn't have that kind of incentive, would you not fear that some of those employers who have really turned their attention to and tried to improve health and safety in workplaces because of that program may lose that incentive?

**Mr Craik:** I'm having just a bit of a problem following you. I'm not picking it up well in my hearing aid. You're saying it was critical for the program —

**Mr Maves:** Yes, NEER. I've heard some support from both the labour and the employer side about that, because some unions tell me it has made their employer pay attention to the fact that if they have improved health and safety, it can also improve their bottom line. So if you didn't have the NEER, you might lose that incentive. I wondered if you had considered that.

**Mr Craik:** I'm having a problem with the question. I spent 42 years in the workforce. They were more interested, I think, in covering up. I was asked, "Can you come into work?" — I couldn't do my normal work — because



this was the second injury of that nature in the last month and the compensation board might ask questions. I didn't bring it with me, but out of a law book in my employer's office — actually, the last five years I spent as a foreman. You see, the worker is injured, he's on modified duty; he's located in the nurse's station to see that he gets his meals. That's where I get the term "Watergate" from.

**The Chair:** Thank you very much, Mr Craik. That was an interesting presentation. We thank you for joining us for the whole day and for spending the time to put this together.

**Mr Craik:** Keep this book in mind and here you have the blueprint.

**Mr Gravelle:** I'd just like to thank Mr Craik and the others who have travelled from afar to be at the hearings today. It's unfortunate that we couldn't have travelled more in northwestern Ontario. Thunder Bay is the only stop. Mr Craik has come 500 kilometres; others have come from Dryden and so on. Obviously it would have been better if we had been able to go to those communities, but I think the government members should recognize that they travelled long distances to get here, and should acknowledge that. I'm glad Mr Craik was able to get on the list today.

**The Chair:** Thank you. I think we all appreciate it.

#### FMB LABOUR ADJUSTMENT SERVICES

**The Chair:** Our next presenter is a representative from FMB Labour Adjustment Services, Francis Bell. Welcome. Please make yourself comfortable.

**Mr Francis Bell:** Thank you, Madam Chair. As you said, my name is Francis Bell. Folks, I'm back.

I want to start off by first saying to you, I'm willing to put my credentials on the table. Are you? I have 21 years' experience being an advocate. I have been in this system as an injured worker since 1981. If you want to know about pain and disability, come and talk to me.

This is a back brace; it's a support. I've damaged my lower back. This is a neck brace. Why do I wear it? Does it look nice? No. I wear it because I have a neck injury. This is a knee brace, \$1,000. Why is it used? Because I thought it would be nice one day to try to tear my knee apart; at least that's what my employer said. The reality is that I've had five operations on my knee alone. The reality is, ladies and gentlemen, that you do not understand what workers' compensation is all about.

More important, I asked my wife to come with me today. She said to me: "No way. I'm not coming because I'd have to really get upset with these people." She was afraid that if you thought Moses Sheppard was vulgar, wait until you heard her. She had to sell her personal jewellery so we could survive, because the Workers' Compensation Board thought Francis Bell was ready to return to work.

If it wasn't for my doctor taking the extraordinary methods he used in getting me to Winnipeg and getting an MRI, the board still would have thought I could return to work. What you don't know is that the MRI showed ex-

actly what the CAT scan showed and more. In fact, it was such a good MRI that the technicians wouldn't let me off the table until they had two orthopaedic surgeons come in and consult about whether it was safe to move me or not. But the Workers' Compensation Board said I was ready to return as a miner.

I come from an industry where killing and maiming is the name of the game. If you kill one and a half people a year, it's okay. In fact, the chairman from the company side of our joint health and safety committee said, "When we plan our accidents, we plan to kill somebody every year." By the way, that employer has kept up that reputation. They say that's okay. After hearing that, I wonder whether you're ready to really hear something.

The first thing, before I even open up the brief, I want to say this to you: I would suggest that you go and call on the occupational health clinic or go to someplace that deals with airborne substances, because for some reason, when all you people get into Queen's Park, something happens to your brains. You've left common sense out and you've left reality out.

Bill 99 and Mrs Witmer know about as much about compensation, about what happens to workers, as Ayatollah Khomeini does. They don't have the faintest idea. I challenge each and every one of you in this committee, including the opposition members, to come and meet with injured workers, not in this nice, fancy forum where you're all protected, but come and meet with real people. Talk about selling jewellery, talk about losing your house, talk about your family getting destroyed. Come and talk to us about real-life things. This is what the current act does, and Bill 99 just helps move it along.

The Workers' Compensation Act and Occupational Health and Safety Act are separate. Workers' compensation is about paying compensation to workers; health and safety is about prevention. Why can't you and your minister understand that? What are you trying to do? Are you trying to merge two things together? Are you trying to do Mr Mulroney's favourite thing? I understand one of you actually had the displeasure of working for that gentleman. Are you trying to water the wine down to make it palatable for everybody? The only thing you're watering down is injured workers' rights.

#### 1720

I want to talk to you about some stuff that was said a bit earlier today and about benefit levels, to start off with. What are benefit levels? Benefit levels are what you pay injured workers. I want to tell you that when I worked in the mine, not only did I exceed your cap amount, but I also had a fringe benefit package that was second to none. Why do I know that? Because I, as the local union president, negotiated it. I know what that benefit package had.

As most of you saw, I was around here most of today. I left this afternoon to take my seven-year-old daughter to the hospital. Back seven years ago, when I worked for my last mining employer, the one that wanted to kill one a year because they thought it was okay to do, the doctor

said, "We have to get her some prescriptions." Those prescriptions cost myself and my family over \$100 today. Those prescriptions seven years ago wouldn't have cost me a penny. Think about that. That's the extra cost that you guys don't take into consideration.

By the way, when I asked the bank to reconsider my bank loan and mortgage on my house, the guy said, "Why?" I said, "The government says that I only get 90% of my net average earnings up to a specified pay rate, up to a cap, so why don't you just do that same type of ratio on my bank loan?" He looked at me and asked what type of medication I was on. He thought it was absolutely insane.

But you stand here today and say, "Not only is 90% not good enough; we want to mark it down to 85%." I want to challenge each one of you, go with an injured worker to their bank manager and ask them to reduce their bank loan by the same percentage that you've reduced their income. Go with a widow who's getting 40% and get the bank manager to do that. While you're getting tossed out of his office, maybe you'll start to understand the realities. You people do not understand the realities that face us.

There were some questions a bit earlier about return to work, about employers needing incentives. I'll tell you a real good incentive. You take away the rebates, toss them out. But what you say to the employer is, "If you don't re-employ or that injured worker doesn't get back to work, you're on the hook for the costs." Guess what? That's an incentive to the employer.

We had the hospitality association earlier today. I wasn't going to talk about it, but I'm just so worked up that I have to. One of the first cases I did that involved the reinstatement officer was about a hospitality place that said, "We know the worker was injured on the job. We know that he's a dishwasher, but it's cheaper for us to pay the penalty and not re-employ him than to get on the hook, because we think we can shut down the VR." That's the hospitality association. That's reality. Come out of the fog. Come back into reality.

An act is about theory. The problem has been that since 1985, and actually before that, there have been some major amendments. The major amendments haven't worked because they were theory. It's like the engineer saying to you, "I can span a river that's 400 miles wide, but I don't think I need supports." When it all falls in you say, "I wonder what happened." Every time a government has attempted to modify, to change the Workers' Compensation Act, all you've done is compounded one problem upon another.

Take this bill, walk over to the garbage bin and drop it in. Then do what Cam Jackson started to do, and really what the royal commission did: Come and meet with injured workers. The royal commission at least had the guts to meet one evening with over 100 injured workers. They had five minutes to tell them what the problem was and what the solution was. The commissioners walked out and said: "We didn't think it would work, but what an experi-

ence. We've learned something." The problem that you all have is you don't want to do that because you don't want to get close to these injured workers because we're all kind of funny, gimpy and whatever. But the problem has been that you haven't fixed it, and this one won't fix it.

I blame all three parties here. Some of the people around this table know me personally and know where I stand politically. But you didn't listen to injured workers. We're the experts. Come and talk to my wife and my kids and let them tell you what it's like when dad can't reach down and pick up something, when dad's gone grocery shopping with them and the next thing they have to do is find a place to sit dad down because out go his legs and his back, and they sit there for an hour and a half wondering if dad's going to get up or we're going to have to call the ambulance in a public place. That's reality. That's not what happens in Queen's Park. The people who drafted this bill obviously didn't talk to injured workers.

I want to talk to you about future economic loss in this new process, where you think you're going to fix the deeming problem by having it reviewed every year. The problem is, deeming is still there. Whether it's "deeming" or "capacity to earn," folks, it's the same thing. It's crystal-balling. You know what the good thing about crystal-balling is? You can say, "It was a guess, so therefore if I'm wrong, it's okay." The problem is, I can't go to the bank or a loan place and say, "I'm crystal-balling that my income's going to \$100,000 next year," because they want real, live facts.

When you talk about operating it like a business, you don't operate this organization like a business, and you don't operate like a business because if you operated like a business you'd listen to your customers. Your customers are the injured workers. That's what this system is all about. Remember, it's called the Workers' Compensation Act; it's not called the Employers' Compensation Act. I know you want to change it to the workplace health and safety act, but again I would ask you to remember that there's an Occupational Health and Safety Act. You want to make health and safety changes, that's where you make them. Consult with the experts. The experts are the workers, not a bunch of people sitting in back rooms who are trying to massage something to make their egos grow. You're not doing workers any good, and in reality you're not doing employers any good.

The KGB services you saw earlier this morning, you think that's fake? You think that's not reality? Call KPMG; they offered major cities in this province their services for compensation management at \$250 per hour. Think about that. Do you pay injured workers \$250 per hour in benefits? Uh-uh. Why not? Because they'd get too rich. But you're willing to pay that firm to go and do a study of the compensation board and then turn around and offer their services to the people who they just studied all about. You want to talk about a conflict of interest? This government has the biggest conflict by allowing that to occur.



I'll tell you, if it was before Bill 15, I could excuse you. I could say, "It's an arm's-length thing." But in Bill 15, your minister decided that she wanted to have her hand in the cookie jar. When your hand is in the cookie jar, guess what? When something goes wrong, your fingers get slapped. That's what I'm here to do. This bill deserves to have all your fingers slapped. This bill, Bill 99, an act to rescind the Workers' Compensation Act, is not good for anybody. Is this bill well thought out? No, it's not. I could drive a Mack truck through it, and I don't know how to drive a Mack truck.

Labour market re-entry: Let's go and get some private contractors. Why do we want private contractors? Because they can get extra billing out of this. Our friends can make some more money. Is it going to do any good for injured workers? Uh-uh: 78% unemployment rate, folks. Why is your unfunded liability where it is? It's because the accident employers won't re-employ people: re-employ, people employed. Guess what? There's less expenses. Pretty simple, isn't it? Why doesn't the bill do something about it? Because we don't want to really touch it, because it might be too hard for us. That's what's going on here.

1730

I want to take you to something that you probably don't want to hear because it comes out of the mouth of your colleague: 60% of people are hurt returning to work. Don't sit there and shrug. Think about it: 60%. Don't cover up; talk about it. Sixty per cent of people are pushed back. Do you know anybody in this room that happened to? I do: me. The person who said, "He can go back to work," is sitting in this room and the person who put my family 14 months down the road before we got a cheque from the board is sitting in the room. I was having to be prepared to go to WCAT, and you want to get rid of an independent tribunal.

I'll tell you what, folks. You get rid of that independence in that tribunal and you'd better be prepared, as MPPs, to have your riding known, to have yourselves known. If you think Mike got a pretty rough ride in Toronto when they demonstrated outside his house, think about what it's going to be like when you walk everywhere and there'll be injured workers tailing you. Think about what happens when you take away an independent tribunal. Even the employers told you, "Stop, put on the brakes, hold up, because we don't want to end up in court, because we'll sue the pants off you. We'll sue you, we'll be successful. The widows in BC showed us the way."

You say, "Where does he get his expertise?" Twenty-one years advocating and that's my expertise. Where is yours?

Madam Chair, for the last thing I want to take you to a special page and I want to read this letter into the proceedings. If you think I come with a jaded opinion, read the letter on page 8 of 18. It's addressed to an injured worker. It has his address and his postal code and I've changed that so that you can't identify it and the compen-

sation people can't go back and say, "Hey, we'd better call the employer and let them know this was done."

"Our records indicate that you have been off work (and in receipt of WCB benefits) or (on LTD/WI) from last day worked to present.

"In light of your lengthy absence, we would ask that you contact the writer and advise what your present condition is and whether you intend to attempt a return to work, with or without accommodation. Additionally, we would appreciate receiving a letter from your physician outlining your diagnosis, prognosis for recovery and when he or she expects that you will be fit to return to work, with or without accommodation.

"Your comments and those of your physician regarding any limitation on your physical abilities, as well as your comments and those of your physician regarding any form(s) of accommodation that may make the performance of these duties possible would be greatly appreciated.

"Finally, we ask that you advise us whether you are in receipt of long-term disability and of workers' compensation benefits, and if so, the specific type of benefits you are collecting.

"We require this information to update our files and to determine your employment status, in view of your lengthy absence. Accordingly, we will take the position that you have resigned your employment.

"If you have any questions...please...contact the undersigned" — signed by the company nurse.

Now, folks, flip over to the next page. The company nurse was involved in an attempt to persuade WCAT, the independent tribunal, that they were entitled to contact the injured worker's doctor. She had been and remains in constant contact with the injured worker's adjudicator and vocational rehabilitation case worker. In fact, she signed off on the VR plan. The company representative knew that the injured worker was in the middle of his retraining program and had previously insisted that this worker return to work a total of 10 times, and guess what? His disability got worse and worse.

Does this sound like Bill 99? Does it sound like this could happen again? This employer says, "I'll get around the comp act by doing it as the company nurse." She's also the compensation specialist. She knew why he was in school and knew what he was doing and knew his physical condition. Really WCAT wouldn't let them have access to his personal doctor and so they were going to try and do it through the back door.

Am I jaded? You're right, I'm jaded. Those are the reasons why. You people have to wake up, get into some fresh air, walk outside here in Thunder Bay and get your minds cleared of the garbage you've been told sitting in backroom offices.

This Bill 99 does not help injured workers. It furthers maiming them, it furthers destroying what they have. You should be ashamed of yourselves, sitting here today and saying this is a good bill. You should take this bill back

and go to the minister and say: "Oops, I think we've made a mistake. Let's stop the process and reconsider."

Thank you for your time and for listening to me. I look forward to seeing you having the ability to stand up and stop this maiming now.

**The Chair:** Thank you, Mr Bell, for your presentation. Unfortunately there is no time for questions.

*Interruption.*

**The Chair:** The time has expired. We're moving now to the next presenter.

## ONTARIO CHIROPRACTIC ASSOCIATION

**The Chair:** The next person to present is a representative from the Ontario Chiropractic Association, Dr McCallum. Welcome.

**Dr William McCallum:** I hear that the committee in Toronto will not be presenting now, so they said I really have to do a good presentation up in Thunder Bay. I hope I can get my points across for them.

I'm Dr McCallum. I graduated from CMCC in Toronto 17 years ago, in 1980. I've been in practice now in Thunder Bay for the last 17 years. I'm probably one of two of the most recent members on the board of the Ontario Chiropractic Association. This is my first real official presentation that I'm giving, so bear with me here. I'm just going to read what I've got to present.

Thank you for the opportunity to speak today. The Thunder Bay and District Chiropractic Society is one of the regional societies of the Ontario Chiropractic Association. The OCA represents approximately 1,750 chiropractors out of the 1,900 in Ontario and is a provincial division of the Canadian Chiropractic Association.

Injured workers are entitled to a choice of medical or chiropractic care. In this submission the society would like to address the following health care aspects of Bill 99 and the workers' compensation system:

The fundamental shift in the management of patients with back pain and other strain/sprain injuries from rest to manipulation and early activity;

Independent expert opinion in Ontario that chiropractors should be given a greater role in the workers' compensation system as equal partners with physicians in areas of policy, patient management and claims management;

The way this is supported by the new inclusive language found in part IV, "Health Care," and part V, "Return to Work," in Bill 99. The society supports and congratulates the government on this;

The need for change to one comparatively minor but important area that still discriminates unfairly against use of non-physicians: section 47 dealing with health care assessments for the purposes of NEL, non-economic loss awards.

A fundamental shift in management. The single largest area of claims, costs and disability for the Ontario workers' compensation system is back strain/sprain injuries. All experts and professions now agree that effective pre-

vention and management of such injuries requires a multifactorial approach comprising: (a) ergonomic design of the workplace; (b) employee education on all aspects of back pain; (c) evidence-based, effective health care services when there is injury; and (d) early return-to-work plans including job modification.

The last five years have seen a fundamental and radical change in area (c), the effective management of patients with back pain injuries.

In summary it is now agreed that management must be based on a bio-psychosocial approach, acknowledging that there are aspects of physical, psychological and social — job satisfaction, life satisfaction, levels of compensation available etc — to be addressed.

Management must also be based on the now-available scientific evidence on which treatment is best in terms of effectiveness, cost-effectiveness and patient satisfaction. New national government-sponsored, multidisciplinary guidelines in the US and the UK, which have been endorsed by the Institute for Work and Health in Ontario, say the same thing: The key approach is manipulation and/or simple over-the-counter medication, together with early return to daily activities and exercise. There must be avoidance of rest, medication and passive physical therapy modalities which prolong disability.

## 1740

The Manga report, which I think most of you probably have heard of, has been out for a few years now. The current management approach represents a swing from the traditional medical model to the traditional chiropractic model. In Ontario this has been independently confirmed by the Manga report titled *The Effectiveness and Cost-Effectiveness of Chiropractic Management of Low Back Pain*, which was funded by the Ontario Ministry of Health. In 1993 health economists led by professor Pran Manga, director, masters in health administration program, University of Ottawa, made the following findings and recommendation:

"(F4) There is an overwhelming body of evidence indicating that chiropractic management of low back pain is more cost-effective than medical management. We reviewed numerous studies that range from very persuasive to convincing in support of this conclusion. The lack of any convincing argument or evidence to the contrary must be noted and is significant to us in forming our conclusions and recommendations. The evidence includes studies showing lower chiropractic costs for the same diagnosis and episodic need for care.

"(F5) There would be highly significant cost savings if more management of LBP, low back pain, "was transferred from physicians to chiropractors. Evidence from Canada and other countries suggests potential savings of many hundreds of millions annually. The literature clearly and consistently shows that the major savings from chiropractic management come from fewer and lower costs of auxiliary services, much fewer hospitalizations, and a highly significant reduction in chronic problems and levels



and duration of disability. Workers' compensation studies report that injured workers with the same specific diagnosis of LBP returned to work much sooner when treated by chiropractors than by physicians. This leads to very significant reductions in direct and indirect costs.

"(R7) Since low back pain is of such significant concern to workers' compensation, chiropractors should be engaged at a senior level by Workers' Compensation Board to assess policy, procedures and treatment of workers with back injuries. This should be on an interdisciplinary basis with other professional, technical and managerial staff so that there is early development of more constructive relationships between chiropractors, physicians, physiotherapists and board staff and consultants. A very good case can be made for making chiropractors the gatekeepers for management of low back pain in the workers' compensation system in Ontario."

The full terms of reference and executive summary from the Manga report are attached as appendix A. I won't go through that now but it's there for your perusal.

Part IV, "Health Care," and part V, "Return to Work": Bill 99, following a trend started in a previous Workers' Compensation Amendment Act, responds to current realities by using inclusive language. Former references to "medical care," "medical examinations" and "physicians" are replaced by "health care," "health examinations" and "health professionals." This provides the legislative basis for a level playing field, the improved care of injured workers and cost efficiencies indicated in the Manga report.

NEL awards, sections 46 and 47: These provide for the assessment of permanent impairment for the purposes of non-economic-loss awards. The society recommends that section 47 be amended as in appendix B. If you'll turn to that for a second, that should be just at the back of your handout.

"(1) If a worker suffers permanent impairment as a result of the injury, the board shall determine the degree of his or her permanent impairment expressed as a percentage of total permanent impairment.

"Same

"(2) The determination must be made in accordance with the prescribed rating schedule (or, if the schedule does not provide for the impairment, the prescribed criteria) and,

"(a) having regard to health assessments" — as opposed to "medical" assessments; we've made the change there — "if any, conducted under this section; and

"(b) having regard to the health information about the worker on file with the board.

"Exception

"(3) If the worker has a permanent impairment and if the worker is unable to attend a health assessment" — again "health" instead of "medical" assessment — "for health reasons, the board may determine the degree of the worker's permanent impairment solely from the health information about the worker on file with the board.

"(4) The board may require a worker to undergo a health assessment" — again "health" as opposed to "medical" assessment — "after he or she reaches maximum medical recovery.

"Selection of health professional" — as opposed to "physician"

"(5) The worker shall select a health professional from a roster maintained by the board to perform the assessment. If the worker does not make the selection within 30 days after the board gives the worker a copy of the roster, the board shall select the health professional" — as opposed to "the physician."

"Same

"(6) The health professional who is selected to perform the assessment shall examine the worker and assess the extent of his or her permanent impairment. When performing the assessment, the health professional shall consider any reports by the worker's treating health professional.

"Report

"(7) The health professional shall promptly give the board a report on the assessment.

"Same

"(8) The board shall give a copy of the report to the worker and to the employer who employed him or her on the date of the injury.

"Request to reassess

"(9) The board may request a health professional to perform a second assessment of the worker if the board considers the initial assessment or the report on it to be incomplete or inaccurate."

I think the last point is payment for health assessments.

"(13) The board shall pay the health professional for performing the health assessment and providing the report and shall fix the amount to be paid to him or her."

We feel those would be appropriate in lieu of the change in terminology present in the rest of the bill.

As presently drafted, section 47 only allows assessments by physicians. The amended section authorizes assessments by health professionals. They must be from "a roster maintained by the board" — subsection (5) — and the board remains in control of who is appointed to the roster. With this amendment, however, the board is empowered to appoint appropriate health professionals other than physicians.

Reasons. These include:

(1) The board has had difficulty recruiting and training a sufficient number of physicians to do this work, especially for musculoskeletal impairments.

(2) Such assessments fall within the scope of practice of chiropractic under the Chiropractic Act and the Regulated Health Professions Act, and similar assessments are routinely performed under the auto insurance and general law.

(3) Inclusive language here is consistent with the general legislative approach found in Bill 99.

(4) Broadening section 47 to empower the board to request assessments from all qualified health professionals can only assist the timely and cost-effective function of the NEL award process.

On behalf of the Thunder Bay and District Chiropractic Society and the Ontario Chiropractic Association, I thank you and would be pleased to answer any questions.

**The Chair:** We have about three minutes per caucus for questions and we begin with the NDP caucus.

**Mr Christopherson:** Thank you, Doctor, for your presentation. I won't use the full three minutes that we have.

I must say, and I hope you'll take it the right way, it sure sounds like round 4,000 of the battle between the physicians and the chiropractors in terms of turf.

**Dr McCallum:** Yes, it's a turf war. That's what Manga said, actually, when he was up here presenting. He said, "You can call it what you want, but it's a turf war, really."

**Mr Christopherson:** One quick specific question and then my leader would like to ask you one: On page 1, under (3), you say there should be a major focus — my words — on "ergonomic design of the workplace." I wonder if there's anything in Bill 99 that leads you to believe that employers will be encouraged, let alone forced, to provide a more ergonomically safe workplace.

**Dr McCallum:** I'm not aware of that. I haven't read Bill 99 from start to finish. The stuff I wanted to comment on was really what we talked about. I'm not sure how you would put that in. It's almost up to the employer to be concerned with that.

**Mr Christopherson:** The reason I ask is that the government claims they're doing so much for prevention and you as a health care expert have said that ergonomic design would make it a safer workplace. So I wondered if you saw anything in Bill 99 — I don't — that would —

**Dr McCallum:** I'm not sure. My colleagues in Toronto may be able to answer that more.

**Mr Hampton:** Could I ask you what percentage of your practice deals with injured workers?

**Dr McCallum:** Probably about 10%.

**Mr Hampton:** Can you break down what occupations the workers you see come from, where they work? Do you have a general sense of that based upon the history?

**Dr McCallum:** It's probably changed over the last few years.

**Mr Hampton:** Changed from what to what?

**Dr McCallum:** I think when I initially started I was seeing more — in Thunder Bay we've got the elevators, we've got the fellows working in the bush, the mills. It's a very blue-collar town, so there were a lot of actual accidents that occurred. Now we're seeing more repetitive strain injuries, ladies working at the terminal all day long developing neck or arm problems, that kind of thing. It is shifting. I don't know what percentage it would be in my own practice because it varies. You're going to flow through different ones.

1750

**Mr Hampton:** One of the things Bill 99 is going to do is effectively put repetitive strain injuries outside the ambit of workers' compensation.

**Dr McCallum:** I know.

**Mr Hampton:** What —

**Dr McCallum:** My feeling as a chiropractor, what I feel about that?

**Mr Hampton:** Is there any logic to that?

**Dr McCallum:** Even with the injuries we see with the fellows working in the bush, to me what happens in your spine is a process, it's all those lifts, it's all those things you've done over the course of the years in your line of work. Often workers' compensation wants to see them fall over a tree trunk or they want to see them fall out of the loader or something like that, but a lot of times it's that last little slip or something that develops the acute back pain. That has been developing over many years, right?

As chiropractors we've tried to explain that to workers' compensation over the years. It was getting better. They started to understand that yes, this guy didn't exactly go out and lift anything 200 pounds, but because of sitting in a loader or a skidder and flipping back and forth all day long, jumping off and pulling on chains, he has developed some chronic back pain related to his work. They were covering that. I'm not even sure, as a member of the OCA, if I'm supposed to comment on that; this is my own personal opinion. I think it is a step backwards.

**Mr O'Toole:** Thank you very much, Dr McCallum, for your presentation. As has been said before, there has been a struggle between all groups in all professions about the roles, and the nurse practitioners may have a role in the new WCB as well, so you'll have more competition, I guess.

In part V I was impressed. In much of the research I have been exposed to is substantiated, not just in the Manga report but also in your own observations, the early return to work. Having worked in an industrial workplace for over 30 years, I think that section, the early return to work, is a critical point, where modified work and other kinds of mediation must be — what's your feeling on that? Is it your sincere individual belief that this whole attitude of work and early return is a very important part of recovery?

**Dr McCallum:** I think so. My feeling is that people who stay off work too long often have more trouble getting back to work.

**Mr O'Toole:** Yes. Other problems emerge, perhaps.

**Dr McCallum:** That's right. You get the psychological and social problems.

**Mr O'Toole:** It's not to criticize injured workers or to suggest for one moment that they caused it or did it; that's not the point.

**Dr McCallum:** No. It's just a process that occurs.

**Mr O'Toole:** The point is that part of the recovery is the whole process of being with your peers and a lot of other things, without trying to be a doctor here.



The repetitive strain injury, that has not been removed, as Mr Hampton suggested. The entitlements in that section are not removed. There's a closer examination and a review of those medical things. It is a more regular review. You yourself would see some injuries with age, some recover better, some don't; rehabilitation perhaps hasn't always worked. But I want to set the record straight.

There's one other point too. You are probably involved in this, I would guess. On return-to-work plans that exist today under the current bill, do you often provide or have any knowledge of providing the employer with work-related medical restrictions, sort of medical records?

**Dr McCallum:** Most of the main employers, like the big mills, will have their own forms that they send out, requesting us to tick off exactly what the limitations should be.

**Mr O'Toole:** Do you see the changes in this bill here as onerous or as somehow leaking private information unrelated to the return-to-work plan? I believe the medical information that would be related would be related to the injury and what the employer or workplace should be aware of to rehabilitate that employee back on to a job. That's an appropriate, thoughtful, scientific way of making sure there's not a repeat of injury and that modifications are made to the workplace where there are ergonomic considerations.

**Dr McCallum:** There should be some kind of correspondence between the treating physician or the chiropractor —

**Mr O'Toole:** That goes on today, does it not?

**Dr McCallum:** It only makes sense.

**Mr O'Toole:** Absolutely. So that's not a big change, although quite often we're led to believe that as members of this committee. I worked with it for 15 years, and for everyone who came back from a compensable injury I had the restrictions: "unable to lift over 30 pounds" — I had it already.

I appreciate your presentation. You're quite thoughtful about it and you're right. With the nature and mechanics of work today, do you think some of the changes in the review process and the return to work are progressive steps?

**Dr McCallum:** I hope they will be. I think if the chiropractors can get more involved — I use the analogy of having an accident with your car and going to a body specialist. Say you were driving down the road and you had something out of alignment and you went to the body specialist and he looked at it; he may not see anything wrong. We hear this all the time. The patient has been to a physi-

cian, he comes back and the physician didn't feel there was anything wrong with the patient. If you go to the guy across the street who is the alignment specialist, he's going to find out that there may be something wrong with the way your tires are lined up or whatever.

**Mr O'Toole:** You don't have to convince me. I go to a chiropractor regularly.

**Dr McCallum:** Great.

**Mr Patten:** Doctor, are you a medical doctor as well?

**Dr McCallum:** No.

**Mr Patten:** You're not. Okay. I share your view generally, the chiropractors' knowledge of manipulation and back pain, especially lower back, and I think you have something to offer. I suggest it will probably be a multi-tiered level of politicking that will be going on regarding the suggestion that chiropractors be the gatekeepers for the management of low back pain at this particular stage. However, if that did come to pass, and I would be supportive, by the way, of having chiropractors play a greater role because I believe they have an important role to play, that it's distinctively specialized training, what is your view related to other health care practitioners rather than medical workers, such as homeopaths or acupuncturists as well?

**Dr McCallum:** As far as what? Including them as —

**Mr Patten:** As part of the big menu of people who have something to offer, with various people at different stages, and it's not all solely contingent upon medical practitioners.

**Dr McCallum:** I think there's validity to a lot of different types of therapy. I don't want to condemn or not — I know that the AHCPR guidelines in the States — are you aware of that study? There were 11 different orthopaedic surgeons and a number of different top professionals who made recommendations to the US government. That's part of what we've said today is based on. They found that there was very little evidence for any kind of help from anything except the manipulative care and some non-steroidal anti-inflammatories; that's about it. If you want to include those, you have to look at what the research is showing as being effective so far, right?

**The Chair:** Dr McCallum, that concludes our questions. You are our last presenter today. It was a most interesting presentation. Thank you for taking the time.

**Dr McCallum:** Thank you. Enjoy the evening in Thunder Bay. It's hot out there.

**The Chair:** With that, the committee will adjourn. We'll reconvene on Monday morning.

*The committee adjourned at 1758.*

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## **STANDING COMMITTEE ON RESOURCES DEVELOPMENT**

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## Legislative Assembly of Ontario

First Session, 36<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 36<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 11 August 1997

# Journal des débats (Hansard)

Lundi 11 août 1997

## Standing committee on resources development

Workers' Compensation  
Reform Act, 1996

## Comité permanent du développement des ressources

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU  
DÉVELOPPEMENT RESSOURCES

Monday 11 August 1997

Lundi 11 août 1997

*The committee met at 0835 in the Ramada Inn, Windsor.*

WORKERS' COMPENSATION  
REFORM ACT, 1996LOI DE 1996  
PORTANT RÉFORME DE LA LOI  
SUR LES ACCIDENTS DU TRAVAIL

Consideration of Bill 99, An Act to secure the financial stability of the compensation system for injured workers, to promote the prevention of injury and disease in Ontario workplaces and to revise the Workers' Compensation Act and make related amendments to other Acts / Projet de loi 99, Loi assurant la stabilité financière du régime d'indemnisation des travailleurs blessés, favorisant la prévention des lésions et des maladies dans les lieux de travail en Ontario et révisant la Loi sur les accidents du travail et apportant des modifications connexes à d'autres lois.

**The Chair (Mrs Brenda Elliott):** Good morning, Ladies and gentlemen. We are pleased to be here in Windsor, members of the standing committee on resources development, listening to presentations on Bill 99. We are particularly pleased to have Mrs Boyd and Mr Hoy join us this morning.

**Mr David Christopherson (Hamilton Centre):** On a point of order, Madam Chair: In light of the fact that once again we see an overflow crowd of people — we've had more than 250 submissions from individuals and groups requesting an opportunity to come before these hearings — and given the fact that the government didn't even want to come to Windsor and that the only way we could get into two communities in southwestern Ontario was a measly half a day in Windsor and a half a day in London, I would like to move that this committee recommend to the House leaders that the hearings be extended so that this committee can return to Windsor and hold the proper kind of hearings that injured workers deserve.

**The Chair:** I think, as you know, that motion is out of order and unanimous consent would be required.

*Interruption.*

**The Chair:** Order, please.

**Mr Christopherson:** In light of your ruling, I would then seek unanimous consent, which would allow this committee to accept my motion and we can vote on it. I would seek unanimous consent to allow my motion to be

placed, that we return to Windsor to hold proper hearings here.

**The Chair:** Is there unanimous consent? I am sorry, there is not unanimous consent.

**Mr Christopherson:** May I ask who's opposed.

**The Chair:** There are a number opposed.

**Mr Christopherson:** And they're all on that side.

**The Chair:** Sorry, there is not unanimous consent.

*Interruption.*

**The Chair:** Ladies and gentlemen, you are very welcome to join us here this morning, but this time is for presenters.

SERVICE EMPLOYEES'  
INTERNATIONAL UNION

**The Chair:** We'd now like to call our first presenter, Mr Brown. On behalf of the members of the committee, we welcome you. You have 20 minutes in which to make your presentation. You may use that all for presentation time or you may allow time for questions and answers.

**Mr Peter Giudice:** Good morning. I'm not Ken Brown. I've come here on his behalf. He's been ill for the last little while. My name is Peter Giudice. I'm an independent workers' compensation consultant. I have been asked to appear in place of Ken Brown, international vice-president of Service Employees' International Union.

Let me begin my discussion by stating that we are all here to talk about the sweeping changes to the Workers' Compensation Act that have been proposed under Bill 99. I believe everyone in this room has much to say about Bill 99 because it deals with an issue that has the potential to affect almost any one of us; that is, the issue of workplace injuries.

Let's be clear. The hardworking people who come from the various labour organizations, advocacy groups and injured worker organizations who are gathered in this room are not exclusively altruistic. It is true that we all care about injured workers and their families, and what happens to them following workplace injuries; that goes without saying. However, I believe everyone in this room also cares about themselves and their own families and I know that we are all uncomfortably aware that at any moment a life-changing workplace injury can happen to any one of us. So how injured workers are treated and compensated for their injuries is of great personal interest to all working people.



It is unfortunate there are so many people here with so much to say about a piece of legislation that is about to be repealed and replaced by a complex new act, and yet these individuals are afforded a minimal opportunity to be heard. The reality is that this committee is only in town for a few hours and we have much more than a few hours of discussion to engage in. By the time you leave you will have heard only a fraction of our concerns. In the time we have been allotted — we have been asked to speak for 10 minutes and then reserve 10 minutes for questions — it will be impossible to engage in a meaningful dialogue.

In preparing for this presentation then, I was left with a choice: either attempt to skim over the changes that trouble us the most, without going into any detail whatsoever, or attempt to have a reasonable discussion regarding one specific issue. I have chosen the latter option. In my presentation I will focus on a brief analysis of section 40 of the new Workplace Safety and Insurance Act and attempt to draw your attention to some serious flaws. Incidentally, section 40 belongs to the area of the new act that deals with the process of returning to work.

It is clear that one of the fundamental principles which underlies Bill 99 is a *laissez-faire* approach to the management of workplace injuries. This is best reflected in the return-to-work part of the legislation. Under section 40 it is clear that the Workplace Safety and Insurance Board will have very limited involvement in facilitating an injured party's return to work in most cases.

There is a provision for mandatory contact between an employer and worker to discuss arrangements for suitable work, but there is no similar mandatory requirement for the Workplace Safety and Insurance Board to become involved. The only situation which will compel the agency to become involved is when a dispute arises. Therefore, employers and injured workers will generally be left on their own to negotiate a re-entry into the workforce.

This section of the legislation is based on the erroneous assumption that the only time there will be problems with the return-to-work phase of a claim is when someone advises the Workplace Safety and Insurance Board of a dispute. Nothing could be further from the truth. I predict that this reactive approach, adopted by this legislation, will give rise to an underground of unreported, unquantifiable problems. There will be an abundance of disputes and problems that this new board will never hear about.

This section is also based on the erroneous assumption that the process of identifying suitable work is one that does not require any particular expertise; that is, the average employer and injured worker will have enough knowledge about the law, the particular injury, ergonomics and accommodating the workplace to ensure a safe and long-lasting re-entry into the workforce.

The *laissez-faire* scenario contemplated under this section is not appropriate, because typically there is an uneven distribution of power between the injured worker and the employer. This uneven distribution of power can lead to perverse outcomes. The legislation leaves this very important negotiation regarding return to work, in many

cases, up to the injured worker and the employer, which means that an unscrupulous employer can use intimidation to persuade injured workers to accept work that may not be physically appropriate.

We must have concern for the more timid workers who may fear repercussions if they file a complaint with the Workplace Safety and Insurance Board, or advise the board that there is a dispute. We must also have great concern for those injured workers who are not fully aware of their rights under the new system. We know that in the past there has already been ample experimentation in dealing with claims by using limited involvement by the Workers' Compensation Board.

We all know that in many cases leaving the negotiation regarding return to work between the worker and employer resulted in injured workers sitting in lunchrooms for weeks on end in order to prevent a workers' compensation cost. Then several years later when the individual attempted to prove that he or she had sustained a significant injury from the workplace accident, the records show the person only lost two days from work. It is irresponsible to withhold the valuable resources of the Workers' Compensation Board, an independent, neutral party with great expertise in the evaluation of suitable work and the development of safe return-to-work programs.

Under the new system everyone loses. First, the injured worker loses because her rights, safety and wellbeing are left up to her own ability to negotiate with her employer and her own knowledge of the law. The employer loses because often even a well-intentioned employer may be an exceptional business person, but a lousy ergonomist, simply because the employer may lack experience. We all know that when an injured worker is sent back to inappropriate work the employer is at financial risk for a recurrence.

It appears there is a provision in the new act for involvement by board staff to offer assistance with the preparation of a labour market re-entry plan, but this will only be in selected circumstances. Also, this involvement will not be by a vocational rehabilitation case worker. We are not sure exactly who will become involved on behalf of the board. It is most important to note that the board's involvement will be in the form of a reaction to a negative set of events rather than a proactive approach to prevent many of the negative circumstances from arising in the first place.

It is our position that the new Workplace Safety and Insurance Board should continue with the Workers' Compensation Board's approach to vocational rehabilitation, particularly the emphasis on early intervention. The new board should continue to automatically offer the assistance of vocational rehabilitation case workers and ergonomists, as well as other professionals, whenever possible. This will ensure that, following an injury, workers will be assisted in returning to meaningful, safe employment. That's what I have to say.

**The Chair:** We have about four minutes of questioning per caucus. We'll begin with the government caucus.

**Mr Bart Maves (Niagara Falls):** Thank you very much for your presentation. The first part I want to ask you about is, you mentioned that employers, especially smaller employers, may not have an understanding of ergonomics and return to work could be difficult, because they would be putting somebody back in a job they couldn't physically do.

**Mr Giudice:** I wasn't really only saying small employers.

**Mr Maves:** Okay. I wonder if you've had an opportunity to see the functional abilities form that has been put out by the WCB for stakeholder input. I wonder if you think that will help the workplace parties agree on acceptable work.

**Mr Giudice:** I think one of the fundamental problems is that often, even when the board is involved in negotiating a return to work, very often a concern arises about the clarity of the restrictions. If there's a board staff person in the middle, at least you have a person with some type of authority who can resolve the issue and can talk about whether this job is repetitive or this job isn't repetitive. But when there's no involvement by a neutral party, it becomes a tug of war and whoever has the most power will determine whether that job is repetitive or not.

I guess in some cases injured workers will have enough knowledge and resources to go ahead and contest, but in a lot of cases I think the injured worker will simply agree to what the employer's proposing and get on with it. That's what our concern is.

**Mr Maves:** On that note then, as you rightly point out, in the case of a dispute the board comes in and mediates between the worker and employer under section 46 and 47. But above that, in subsection 40(5) it says, "The board may contact the employer and the worker to monitor their progress on returning the worker to work, to determine whether they are fulfilling their obligations...." Should that read "the board shall contact the employer"?

0850

**Mr Giudice:** Yes, because I think that's very distinguishable by the way the system is in place today, where there are provisions for mandatory contact and mandatory involvement of the case worker at specific case points, as opposed to just telephone contact. In this case, it sounds like they're saying there may or may not be contact, and I am assuming that if there is contact, it will probably be over the telephone, a 30-second phone conversation and that will be the end of it.

**Mr Maves:** In many instances, especially in larger workforces — we met with one the other day in Thunder Bay. The paperworkers' union at Avenor have their own return-to-work program which has been extremely successful. They have their own functional abilities form and so on and so forth.

If we had "shall" in there, would workers' compensation be interfering with the program that's been successful between the paperworkers' union and their employers?

**Mr Giudice:** I think the Workers' Compensation Act has to be written in a format that would apply to the ma-

jority of circumstances, as opposed to the exceptions. If that's an exceptional workplace, I'm sure a telephone call from the Workers' Compensation Board, or perhaps even a visit by a case worker, isn't going to disrupt their whole program.

**Mr Maves:** Thank you very much, Peter.

**Mr Richard Patten (Ottawa Centre):** Good morning. I agree with your opening comment that there certainly wasn't enough time. By the way, if you do have anything in writing you can still submit that to the committee.

*Interruption.*

**Mr Patten:** Yes, I will read it.

There are 106 pages in this piece of legislation, and it certainly isn't enough time to give it considered thought, as I am sure you have.

*Interruption.*

**Mr Patten:** I do support Dave's resolution; in every place he's made that resolution we've supported him. We think it should have had more time, not only for presentations, but in each area.

My question to you on return to work: Do you feel that the new bill changes the balance of power between the workers and the employers in terms of return to work?

**Mr Giudice:** It doesn't necessarily change the balance, because that difference in power will always exist, but it exploits that difference in power. That's what I think injured workers should be concerned about.

**Mr Patten:** You implied that the incentive would not be there for the employer — let's say for an employer who didn't have the same sense of responsibility that hopefully one might, there are probably incentives to avoid filing a claim or encouraging a claim to be filed.

**Mr Giudice:** Yes, I think there are incentives to avoid filing a claim, and once a claim is filed, there are also incentives to bring people back to work in haphazard ways that may or may not be appropriate.

**Mr Patten:** As you see it, you'd use the term "laissez-faire." You feel it's too loose and that there should be something in writing in the legislation that provides for an intervention of the board itself.

**Mr Giudice:** Yes. Many times there's already conflict between the injured worker and the employer following an injury. To just say, "Go at it on your own" isn't appropriate. I think somebody needs to be in the middle, especially in a potentially conflicting situation such as this.

**Mr Patten:** Let's say someone is injured; they're sitting around doing nothing, and then finally the injury is considered to be more serious later on. That worker may have jeopardized his position to seek compensation based on having supposedly continued working, when in fact it was a fraud to begin with.

**Mr Giudice:** You're speaking about when it appears that there is no lost time?

**Mr Patten:** Yes.

**Mr Giudice:** We get into it a lot when people try to establish — in 1997 they find out that they could have gotten a pension for the injury they sustained in 1985, and



then you go back and try to dig up the records. First, the Workers' Compensation Board file shows that the person returned to work two days following their injury. The injured worker insists that he returned to work, yes, but for three months he did absolutely nothing; he sat in the lunchroom. Then when you approach the employer there is absolutely no documentation to support that. Fifteen years following an injury — the evidence that would be necessary to establish such a claim is pretty substantial and usually in such a situation the worker would have a tough time proving his case. If the board's not involved, you get into the problem of a lack of proper documentation.

**Mr Christopherson:** Peter, thank you very much for your presentation. I appreciate that you brought a few friends along with you. As you know, you are very fortunate as one of the few who got an opportunity to make a presentation, given the hundreds of other people and organizations that have been denied an opportunity to have their democratic say. Thank you again for representing them as well as your own members.

*Interruption.*

**Mr Christopherson:** We get so very little time, let's not blow it.

**Mr Giudice:** I thought you were discharging me.

**Mr Christopherson:** No, no. The parliamentary assistant to the labour minister raised the issue of the functional ability form. I want to spend a second talking about that. I don't know if you've had a chance to see a copy of the draft that's been sent out to stakeholders, but I'm sure you're aware of the fact that under the new Bill 99 workers will not have any choice but to have this medical information released, without their consent if need be. We're having a great deal of difficulty getting through to the government, making them understand how working people feel about being forced to give out private medical information so they can receive an entitlement to which they are otherwise properly entitled, meaning WCB. Could you tell us how you feel about having to fill this form out?

**Mr Giudice:** One of the concerns injured workers would have in filling out such a form or having their doctors do so is, what will happen with this form once it's filled out? A lot of people's experience is that when they bring in a note from their doctor with restrictions, often that note goes by the wayside or it's contested or the Workers' Compensation Board will come in and say something different.

Perhaps doctors and workers alike are frustrated by the idea that they go through considerable attempts to provide information to assist in their return-to-work process that gets shrugged aside. I think any injured worker would agree that they should help with the return-to-work process, but to go through the time and effort of getting all kinds of information that ultimately won't be used is a problem.

**Mr Christopherson:** I think it's also fair to say it's a problem, given the fact that people have to have this medical information released. At this point, I still haven't heard

it clarified from the government that the information released is limited to just the work injury. If you accept that there has to be such a form and there are other medical conditions that may show themselves that could affect their employment, there's a real concern about that.

The other point you raised — I wrote down the phrase you used: "uneven distribution of power." Those of us who have been in the workplace for a lot of years clearly understand that and don't need to have it explained. But for the benefit of some of the government backbenchers, would you give an example in some detail of a scenario where an injured worker, without benefit of a union — that's the way this government would like the province to be, union-free, because they don't like unions — because of that uneven distribution of power is coerced or feels they don't have the ability to fight for their own rights when they're dealing with them. Could you explain that a little bit more, and the fact this is being done in the absence of the WCB being involved?

**Mr Giudice:** I can think of a situation where perhaps an individual working for a mid-sized company has an injury, and I can envision this in my own mind: He gets called into a meeting with probably four or five of the management people and they start talking about what he or she can and can't do. He'll start saying, "I'm having a hard time with too much standing and too much sitting." The employer would then say: "I don't think your job involves a whole lot of standing or a whole lot of sitting anyway. Let's think about this." They'll go into the employer's perception of what the physical demands involve and probably downplay the effects of the injury. At the end of the day, after the person is overwhelmed in a meeting room with four or five management people, he agrees to go back to the job.

**Mr Christopherson:** Is it fair to say too that, especially without a union and without a collective agreement, they're worried about their job in the future? If they give this employer too much of a hard time, they may not get a job posting they were looking for, they may not get the shifts they're looking for; in fact, the employer may start a process to start slowly easing them out of the job entirely. Is that not fair to say in some workplaces?

**Mr Giudice:** I wouldn't want to have an injury on my fifth day on the job with such an employer. That would clearly be the beginning of the end of that person's employment in a lot of cases.

**The Chair:** Thank you very much. We appreciate your taking the time to come to the committee this morning.

0900

#### INJURED WORKERS' ACTION COMMITTEE

**The Chair:** Could I have a representative from the Injured Workers' Action Committee, please. Good morning, gentlemen. Please introduce yourselves for Hansard. You have 20 minutes for a presentation; that may be all presentation or you may allow time for questions.

**Mr Al Godin:** I'll start off by saying good morning to the panel. My name is Al Godin and I am an injured worker. I'm also a member and the president of IWAC, the Injured Workers' Action Committee, Essex and Kent counties. IWAC is an affiliated member of the Ontario Network of Injured Workers Groups out of Toronto. Mr Karl Crevar is the president, and he is seated with us here at the table. Also seated here with us is Mike Lawson, who is also an injured worker.

IWAC was formed back in May 1992 by Pat Hayes, past MPP for Essex and Kent counties. Pat Hayes is a person who cares for others and worked for the betterment of his constituents, not like the present-day government, which wants to make life more difficult for the not-so-fortunate living here in Ontario.

As I said in the beginning, I am an injured worker. I am not happy about being injured any bit at all. I tell you here and now, I'm glad I was injured before Bill 99 takes effect. It's going to make life a living hell for workers in this province who become injured after Bill 99. I say to you, we are real people and our injuries are real injuries.

Being involved with injured workers, I have become more aware of many horror stories that are a result of unrealistic goals forced upon them by the system. This system is not perfect, but it is much better than the proposed changes in Bill 99. Bill 99 will cause even more pain and suffering, not only to the injured workers but to their families as well, for an injury to one is an injury to all family members. Our families also suffer from our injuries. Our loved ones become tormented at times by mom or dad having a difficult day coping with their injuries. Our loved ones do not deserve the anguish of this injury. Many families separate and divorce because of an injury. It puts an unbelievable strain on a relationship between spouses. The rate of divorce is high and suicide among injured workers is also on the rise.

Because of my injury I became so depressed, I had to seek counselling for three years. I got so bad, I contemplated suicide on several occasions. My injury was lower back and it's become a nightmare ever since for me and my family. We went from \$50,000 per year income to \$12,000 on welfare.

My claim was approved and it was going okay till my adjudicator wanted me to return to my workplace employer for a trial work period. My doctor and I agreed we should try it, but I was to stop if anything went wrong. Well, it did. I worked for four days in that trial period and only 12 hours total in those four days. On the fifth day, I was admitted to hospital due to severe back pains. My doctor and wife notified compensation of the findings, that I would not be able to continue at this work trial. My adjudicator said, "Fine, but I find it a medically fit job and you will be cut off in 14 days."

Well, we were cut off. We had to live in a two-room motel apartment because we could no longer afford our home. I appealed her decision and won my appeal 14 months later, but I was only granted 50% temporary total. I then appealed this decision, which I again won. The

decision review officer at the WCB said I should never have been cut off and I should have been assessed for a permanent pension two years prior to his decision.

It took me and my family five years to get some sort of dignity back into our lives. Without the love and support of my wife, Beth, and my son, Edmund, I would not be here today speaking to you. I love and respect my wife with all my heart; she and Edmund helped me turn my life around. She has since graduated from nursing school, in 1991, and works in a hospital in Detroit, Michigan. She gives me my injections at home nightly to save me from sitting in a waiting room in a hospital for five hours for a shot. I thank you for that.

I need help many days with the everyday tasks that many people take for granted. She helps me with my personal hygiene, for on many days I am not able to bend and do certain things we all take for granted. My 12-year-old son, Edmund, helps me put on my socks and shoes on most occasions. It is very hard to accept that I must rely on others for the simplest things in life, things even you take for granted. I am truly blessed to have them in my life.

You see, I am a real person and my life has been affected severely by being an injured worker. We never asked to become injured workers. We only ask for fair compensation for our injuries.

This government says they are doing these changes to focus on prevention, to make the system safer for all concerned. This is so far from the truth. The government is hell-bound on making this system better for the employers in this province by taking away the rights of workers here in Ontario. I say shame on you.

By taking away the Occupational Disease Panel, you have taken away a system that has recognized many workplace hazards and is seen by other countries around this world as a leader in occupational disease research and findings. By the ODP's work in this field, we have not only saved injury to future workers but we have saved many lives by their findings. Now you want to place it back within the WCB. My friends, this is like telling the fox to guard the hen house — not a good idea.

Having the workers now ask their employers for the forms to start an injury claim puts undue pressures and intimidation by employers to their workers. Telling injured workers they must sign a paper to allow employers to have access to their medical files is sheer ignorance by this government. If we demand you to release your medical records to us, the constituents in your ridings, before we allow you to run for office, do you think this is right? No, it's not. Even I will say it's not right. And it's not right for you to demand that we as injured workers sign a release form of our medical records to be given to our employers. You must strike this totally from the bill.

As a matter of fact, the entire Bill 99 should be scrapped and sent to a real committee that can come up with a fair and just system for all the people here in Ontario, not just the wealthy. If there was a time, God forbid, when we the people of Ontario had to thank you for



something, it most certainly would not be for what you have done for us but rather what you have done to us.

There are a few members on the panel who do fight for the working people, and they know who they are. They are to be commended for their efforts. But I'd like to personally thank Dave Christopherson for his undying efforts to help all workers and the people of Ontario. It is people like Mr Christopherson who put dignity back into our lives. He is not only an asset to Ontario's Parliament as an MPP, but is a great asset to mankind all over Ontario and Canada. I thank you, Mr Christopherson, for all injured workers in this region, as well as the entire province, for your never-ending dedication to make our lives better.

In closing, I say to you, remember, it only takes a moment in time to change an entire lifetime. You are only a moment away from a life as an injured worker. Think about it. You yourself or your children — and that's important — your children and our children may become an injured worker through no fault of their own.

I now turn the chair over to my friend, as well as a fellow injured worker, Mike Lawson.

**Mr Mike Lawson:** Thanks, Al. I'd like to make my presentation on behalf of the injured workers who were denied the right to speak to this committee. We didn't go to work to get injured. We didn't ask for the pain, the disruption of life, the uncertainty of our future, the social insensitivity directed towards us by a government that shuts us out of the decision-making processes and further victimizes injured workers and their families.

0910

A previous government started a royal commission to listen to all the stakeholders and to summarize a report. Most important, many injured workers had the chance to speak to that commission about how their lives had been destroyed. Driving back to Windsor from many of these hearings, I was often filled with emotion as I recalled what was said at those hearings: the employer rhetoric about slashing benefits, denying entitlement to injuries and occupational diseases, the stereotype of injured workers being lazy and abusing the system; then the injured workers' accounts of how their lives had been affected would hit me like a slap in the face.

Do you have any idea how hard it is to get up in a roomful of people and open up your life and your soul, knowing that your own brothers and sisters are talking about you and why they think you don't come forward? I admit many injured workers from across this province. I feel their pain, their anguish of body and mind, the constant reminder of their injuries and diseases, the feelings of uselessness and abandonment from society, all because they became injured or suffer from an occupational disease.

I have spoken to family members who suffer right along with the injured worker, and suffer in silence. We are telling you and the public that Bill 99 is a result of employers disregarding the responsibility to their workforce once they have suffered an injury or an occupational disease.

"I personally believe that workers' compensation needs to focus more on prevention of accidents and illnesses," says Labour Minister Elizabeth Witmer. If this statement means anything, then why is the Occupational Disease Panel being eliminated? Why are the occupational clinics for workers being threatened with closure? Why is the Workplace Health and Safety Agency being rolled into the same body as the compensation function? At one point this agency was moved out of the WCB because accident prevention was not getting the attention it deserved.

You may think that the public is impressed by these so-called new directions Bill 99 will provide. You have eliminated worker input in the decision-making processes. You have eliminated agencies that are proven in reduction and recognition of injuries and diseases. You have denied entitlement to injuries and occupational diseases. You have taken the basic right to a fair and just hearing at the Workers' Compensation Appeals Tribunal. You are not fooling us with your lies and refusal to hear from injured workers. We demand that you withdraw Bill 99 and listen to the real stakeholders and design a system that will provide fair and just compensation for all workers in this province.

Further, why are you not listening to us? Are you afraid of what we have to say? Are you embarrassed that a system that was supposed to assist and support workers who have become injured or suffer from an occupational disease has for the most part failed? Does the truth scare you? Or could you care less that another human being is suffering and is trying to tell you that this bill will cause devastation and untold hardships to the body and soul of those who will be injured in the future?

Do you agree that workers are nothing more than commodities, that once they are defective and used up, they are to be thrown on to some scrap heap and more workers brought in to take their place, only to be discarded once they become injured or suffer from an occupational disease? Workers know that employers must continue to prosper. After all, isn't this what assures jobs, purpose and meaning in our lives?

Workers know when their employers, and governments that only listen to employers, are perpetuating myths about so-called unfunded liabilities and the high costs that are killing them. The killing and maiming is being done in the workplace by irresponsible and negligent employers who have succeeded in conning this government, with Bill 99, into the denial of entitlement of injuries and diseases suffered in their own workplaces; the fear and intimidation when injured workers who are in pain and uncertain about the cause of their injury or disease must initiate their claim and sign a waiver to release medical information before they themselves know what is wrong.

Under the guise of prevention being the board's new focus, you have left us to wonder whether decisions will be based on science or on the dollar value to be put out. You have done nothing to improve the system or consult with the people directly affected. Instead, you have put up

barriers and labelled us as special interest groups or another labour group making noise again.

We do have special interests. We don't want to see people fall into cracks in the system and have their lives crushed. We don't want to see families fall apart. We want safer and healthier workplaces. We are all workers in many different workplaces. We have at least that in common.

The only way effective change in society will take place is when we can all sit together and make changes that are fair and reasonable for those affected.

**Mr Karl Crevar:** Good morning. My name is Karl Crevar. Let me start off by expressing to you my anger again, Madam Chair, when in a free and democratic society workers in this province want to come to you and your committee has had the security brought in. We're not a violent mob. All we want is to be heard. This is not the first location; I have expressed that concern to you before. As you can see here, my presentations have been made early in the morning. People want the right to express their views. This is still, as far as I know, a democratic society. Democracy is very difficult, but I can assure you that if you continue this process, we will fight to keep the doors of democracy open.

I want to take this opportunity to set the record straight about Mr Hastings's comments in Thunder Bay and his concerns about the differences in the unfunded liability. It is true, Mr Hastings. You stated that the WCB has about \$9 billion in assets in the bank and that there is still about a \$10-billion liability out there. But what you alluded to — when you come out you should tell the people the truth — Bill 99 is taking \$15 billion out of the pockets of injured workers to pay for that \$10 billion. The other part is that the employers already enjoy that 5% reduction in assessment rates effective this year.

The other point you alluded to was the fact that employers continue to receive rebates in the course of half a billion dollars a year. So who is paying in your Bill 99? It's the workers. That's not fair. You've heard the presentations from my colleagues here. I say to you, shame on you when we workers in our middle age have to come to you and plead in tears about what's happened to our families. All we're asking you to do is to expand the hearings so that we have the right to be heard, so that we can express to you what's happened to us. You've refused to do that.

I just want to conclude and say that we were in Thunder Bay, as you well know. When I came back from the hearings in Thunder Bay I opened my mail on Saturday. I'd received a letter from an injured worker in Niagara Falls. I forgot to bring the letter with me but I will most certainly share with you, because I talked to the injured worker and she gave me permission, if necessary, to release her name and any information pertaining to it.

She had written to the Premier of Ontario; she had written to John Quince at the Workers' Compensation Board who, I might add, she was told by someone from the board was the chair of the compensation board. She

requested information and that was misinformation, that was misdirected.

The only response she received was from the other organization she contacted: the Canadian Labour Congress. She had sent out numerous letters seeking assistance and through that course she contacted me. She'd had one response to all her requests to talk to her and her family about her concerns, one response, and that was from the Canadian Labour Congress — not from the board, not from the Premier of Ontario. I understand how it works. The Premier would ensure that the communication was put to the appropriate department, which is the Ministry of Labour, and that accordingly would have been put down the line — no response from Mr Quince from the Workers' Compensation Board. I might add, Mr Maves, she's one of your constituents and she had also contacted your office and got no response. I will share that information with you, Bart.

**0920**

In conclusion, what I found very appalling is the impact and what this woman, who has a 14-year-old daughter and an 11-year-old son, was going through, how that has impacted on her life. She closed by saying, "I beg you, please help me, whatever you can do." I talked to her yesterday and assured her that I would raise the issue with Mr Maves and with the committee here.

This is what injured workers are going through. Give us the opportunity. Do the right thing. You have the opportunity to take back to the Minister of Labour, to the leaders of the House, the request to extend the hearings so that people can express to you their real concerns. You have the opportunity, Mr Maves. You have the correspondence from the Minister of Labour. You know it; I know it. You have that opportunity. Do the right thing. If you're not going to do anything else, at least do that. The least thing you can do is to extend the hearings. But we ask you and urge you again: Withdraw Bill 99.

**The Chair:** Thank you very much. That concludes the presentation.

#### UNITED INJURED WORKERS GROUP

**The Chair:** I'd like to call now upon representatives from the United Injured Workers Group, please.

**Ms Eunice Lucas-Logan:** Hear ye, hear ye.

The year is 1914 and man is now entering the fastest industrial era that man has ever known.

Poverty is out of control in the working class. Labourers are getting injured and dying in sweatshops. The common folk are suing the employers for their injuries or spousal death.

Businesses are going bankrupt because they cannot afford to pay the lawsuits awarded to them by the courts.

We, the government, a Progressive Conservative government, have to do something to protect our working-class people and our businesses for this province to survive.



I, Sir William Meredith, a Progressive Conservative, will conduct a royal commission to see what the people in the province of Ontario and the businesses of Ontario think should be done.

A year later: It is now January 2, 1915. The Progressive Conservative government is signing the first-ever protection for businesses and the labour force called the Workmen's Compensation Act. This bill will go down in history as the historical tradeoff. Workers injured on the job could no longer sue their employers, and in return injured workers were guaranteed an income after their injury. Businesses boomed and the province of Ontario prospered and became one of the richest provinces in Canada.

The only change that has ever taken place was the name of the act, when it was recognized that women too had a major role in the workplace. The name was thus changed to Workers' Compensation Act.

**The Chair:** Excuse me. Just so you know, your voice isn't being picked up by the mikes.

**Ms Lucas-Logan:** That's okay. Hansard can get a copy of what I'm saying.

**The Chair:** All right. Just so you know, though, it will be submitted as a document but it won't actually be in Hansard.

**Ms Lucas-Logan:** That's okay.

The name was thus changed to Workers' Compensation Act in recognition of women's contribution to the growth of the province's economy.

As labour changed, the rights of injured workers changed to where today they are not automatically pensioned off but are sent back to school, given a job or job training and are put back in the workforce as productive people in society.

Along comes Mr Harris, another Progressive Conservative. Please note he is not a businessman. He is a professional golfer. He has never run a business to find out what the employer or employee faces on a day-to-day basis. Mr Harris has a work-related injury called tennis elbow. According to a reliable source, it has been noted that he has quit shaking hands because the movement of his arm bothers his elbow. I pose the question to Mr Harris: What are you going to do when you are no longer in office and you have to return to your golfing for a living? Are you then going to go to the Workers' Compensation Board, which you have set up under the privatized insurance plan, to try to get retraining? If you speak up for yourself, Mr Harris, and say that your arm is in a lot of pain, you will be deemed uncooperative. Your benefits will be cut or eliminated completely.

Mr Harris, this is the perfect opportunity for you to continue the protection of the bottom line that all businesses so enjoy by ensuring that the principles Sir William Meredith established in 1915 are continued. In your effort to dismantle everything the Liberals and New Democratic Party have done, you're also dismantling one of the very fundamental concepts: to protect all injured workers and

businesses from undue hardship. Remember, this concept was set up by a Progressive Conservative government.

Injured workers should not be used as scapegoats for the just-in-time policies of businesses today. If your concern is abuse, statistics have shown there is 13% employer abuse of the system, compared to 3.5% employee abuse. It may be time to re-educate some of the province's employers.

In Alberta, Liberty Mutual, one of the leading underwriters of workers' compensation in the United States, conducted a study comparing private insurance versus the current employer-funded system. Liberty concluded that dollar for dollar, benefit for benefit, our system far outweighs the private system. In Alberta today they are focusing on the problems of the system, ie, making case workers responsible for their actions instead of protecting them under the act in three separate sections, as in the law in Ontario. Alberta is also focusing on proper retraining for the injured worker, taking into account their restrictions and disabilities, instead of the attitude of Ontario of, "Get rid of injured workers as fast as possible and put them on the welfare roll."

Remember the injured worker was not lying watching Oprah or Bart Simpson. He or she was a producing person in society and still has a strong desire to remain so if given the opportunity. The proposed changes to the Workers' Compensation Act assume that injured workers no longer deserve the right to work and contribute to society but want to stay at home on the welfare roll.

I think you've already the WCB versus private insurance. I highlighted some of the things I would like you to take a look at. It was put out by Alberta. First under "Study Limitations: WCB legislation provides employers with freedom from suit by employees who are injured during the course of their work-related duties. However, no attempt was made to factor this freedom from suit into either the cost or value comparisons which form the basis of this study." When you read through these, please keep in mind that they do not take into consideration that if you go to private insurance, you will then be able to go and sue your employer.

"When all benefits provided by WCB are taken into consideration, the grand aggregate rating was 0.76." This means comparable private insurance benefits are 24% less valuable than those provided by WCB.

On the next two pages I highlighted information they gathered from the States. There are one or two that say it's higher, but you also want to note that the very last line says it does not include small businesses down in the States, which are not allowed to get private insurance.

The last thing I want to bring to your attention in this is:

"One might assume that if the private insurance sector were able to compete head on with the WCB, the end result would be a reduced cost for compensation coverage. However, a cursory examination of compensation costs in American states which have competing private and public

plans does not show this to be the case." They prove right there that private insurance doesn't work.

#### 0930

The last thing I want to bring to your attention is a little story. Everybody has a different story so you have something to talk about in the car to London, but the numbers are the same. When you're working you've got \$2,500 a month; because of your disability you've either been deemed uncooperative or you've been retrained successfully. After you read your little story you'll understand.

"Detailed Tax Calculation:" Everybody turn to that page and we'll do your tax calculation for you; you're an injured worker. The amount of your monthly WCB cheque — it will be on your first page, — is \$600. Write in \$600 for me. You now get section 147.4 — it's on your front page again — as long as you're under age 65. For some reason, WCB thinks you're dead and gone; when you're 65 years old you no longer exist. Put \$200 in there; you'd have been allowed that. Now subtract the \$200 and you come up with \$400.

"Amount of your lifetime benefits," from line 102. A lifetime benefit is \$400. On the very last page you'll find a column; everybody is a different age so I can't give you the answer to this one. You have to figure it out yourself. It's the multiplier of your age, in column A of the multiplier table. You have to look up your age as of today, column A, and put down the multiplier on line 104. This is where a calculator would come in handy. Does anybody have any more calculators out here? Multiply line 103 by 104. For you guys in the audience, I came up with \$57,200. This is the tax on the lifetime portion of your benefits based on your loss of buying power at age 75. Boy, talk about your life on the line: I'm 42 years old; from 42 to 75 I am going to lose \$57,200 in buying power. Remember, Mike Harris said he's not going to touch injured workers or disabled people or underprivileged people.

Part B: The amount of supplement from line 101 is \$200. Then multiply your age in column B. You go to the same column you had before, column B, and stick it down. For you guys out here, I came up with \$15,120. This is the tax on section 147.4 — remember, when WCB deems you unable to go back to work, you get that — based on your loss of buying power at age 65. So when I get to 65, I've lost \$15,120. Your total: You have to add up lines 105 and 108. By the time I'm 75, I'm going to lose \$75,320 in buying power.

We want to go back one page. I apologize for not doing it right; it was too late when I was doing it.

The escalating poverty instalment plan: The first year you get your cheques you're okay. You're given the 2.3% and all that kind of stuff. Through the Friedland formula, this is the money you're going to lose, because inflation doesn't stay the same. The amount of your monthly cheque is \$600. That's on your front page, that's what you're given. Multiplier of your age in column C; again you've got to go back to the last page. Mine is 0.75. You multiply those two together and it comes out to \$310.20. This will

be the buying power of your monthly WCB cheque, just before you turn 65 and lose your pension supplement, in 1996 dollars. So from \$600 I'm going to drop to \$310 when I'm 65, a drop in old age.

We're on to Part 2: Amount of your lifetime benefits, \$200. The multiplier for your age from column C. Mine is 0.517. You multiply the two lines together and it comes out \$206.80.

Part 3: Amount of your lifetime benefits from line 102 is \$400. The multiplier for your age from column D. Multiply the two together and you come up with \$154.40. This will be the buying power of your monthly WCB cheque when you turn 75. When I'm 75 years old, the \$600 I'm receiving today will only be worth \$154.40. The majority of people in my household live until they're almost 100, like 92 or 93.

The last thing I want you to do is the Mike Harris Faker Index. If you do nothing else, the last page I want you to do. Line 301, the amount of your supplement; that's \$200. Your age from 65, enter here. Mine is 23 years. Multiply the two lines. Mine comes out to \$4,600. The amount of your lifetime benefits, \$400; it's given on your first page. Your age from 75; mine is 33. Multiply 304 and 305 together; it comes to \$13,200 in my case. Now you add lines 303 and 306 and you come up with \$17,800. The multiplier of your age in column E of the multiplier table; mine is 27.4. You have to look up your own. Multiply 308 by 309. Mine comes out to \$126,040. You guys can figure it out.

When you're finished, you divide line 315 by 316, and this is the percentage of purchasing power that the Harris injured workers' tax will extract from your benefits over your lifetime, based on government projections of inflation and life expectancy.

On the bottom, your rating chart: 0%, you are truly disabled; 1% to 20%, everyone must tighten their belts, especially you; if you have 21% and up, get a job, welfare bum. I got 34%.

Mr Christopherson, I have some letters for you to give to Mr Harris for me. I have some out in the car, all signed. Just deliver them to Mr Harris, please.

**Mr Christopherson:** I'll be pleased to. Thanks very much.

**Ms Lucas-Logan:** Since I'm an injured worker, I deserve to wear the glove. Who would like my glove? Nobody wants my glove.

**The Chair:** That concludes all of the presentation time. Thank you very much.

#### 0940

### WORKERS' COMPENSATION BOARD HEALTH AND SAFETY FIGHTBACK

**The Chair:** I now call representatives from the Workers' Compensation Board Health and Safety Fightback.

**Mr Rolly Marentette:** My name is Rolly Marentette. I'm the chairperson for the OFL's WCB fightback committee for the Windsor and area region. I'm not going to



be the only one making that presentation today. I'd like to start off by thanking you for giving me this opportunity, but I'm not going to do that, because I don't think you deserve it. Out of 122 people that asked for standing to make presentation on Bill 99, for the few of us who got this opportunity it is not something we cherish. We don't think we're fortunate at all. As a matter of fact, I find it personally disgusting that you have not given an opportunity to people to have a say in something that's going to affect as many lives as this is going to do. This is going to change the future of workers in this province forever.

That's something very important that maybe this committee should start to understand. An injury is not just a personal thing. I can tell you that because I speak from experience, not because I am an injured worker but because my background is in health and safety. I'm a full-time health and safety instructor at the Chrysler Corp. I train other workers in trying to raise the awareness of how important an issue it really is. That's very important, because most people just go through life — it's almost like driving down the 401; you never think this is going to happen to you. I take it very personally because I have to do an awful lot of the research so that I'm capable of getting that message across. That's very important, for people to understand just how big an issue it is.

Last year alone in this province, 227 people died. They never went home that night, and I'm sure none of them left that morning to go to work with that thought in mind. Almost 400,000 people suffered workplace injuries, and maybe a third of them were fortunate enough to get WCB. WCB is not my background; health and safety are, though. This was a hard thing for me to get my head around last August, when I was given the responsibility to try to put together a committee to raise this awareness in the community. It was a hell of a learning experience for me.

I have a hard time understanding how you people in this very short period of time can look over legislation — and we're not talking about amendments; we're talking about from the first line to the last line and how this is going to affect working people. In this very short time you're going to be sitting there going through your copies of the act, explain to me, if I've been working full-time, eating and sleeping and breathing this issue since last August, almost a year now, and I still don't know everything that's in there, how in the hell are you people going to be able to make any kind of recommendation or any decision on something that's so important for so many people in this community.

In my classes, I raise the name of a young man, 16 years old, every day I get a chance, to make people understand the feeling that's behind this. A young man by the name of Louis Schoonha, a 16-year-old worker at a Bay store in 1992, got his head crushed in a baling machine in Toronto. I can only ask you to imagine what kind of impact it had on his parents to understand just exactly what the hell we're talking about here. We're talking about human lives.

I've got a 19-year-old son that I cherish beyond anything. I can only imagine what effect it had on Louis Schoonha's parents when they got that phone call that said, "Mr and Mrs Schoonha, your son's not coming home tonight." I think about this young man constantly because I can't forget about him. If I forget about Louis Schoonha and the other Louis Schoonhas we've got, the young 16-year-old workers that are exposed to these hazards of the workplace — and they're not accidents. We shouldn't call them accidents, because most of the time, employers know ahead of time that there have been problems on these things and they refuse to listen or they have the same attitude a lot people do: "Don't worry about it. It's not going to happen to me; it's going to happen to another employer." A lot of employers probably hang their head in shame after something happens.

The compensation act, the health and safety act, is reactionary. They only do things in this government when something happens. A lot of employers only do things after something happens. So what do we do?

We see the body count go up. We've seen, in this province, an average of 300 workers die every year, just in this province alone. That's not acceptable. We should have zero tolerance.

In the other part of the bill, they're talking about delisting repetitive strain injuries. That's going to make you all look real good statistically, because 50% of your claims at WCB are no longer going to be recognized. Instead of that 400,000, you've already come ahead 50%. You're going to eliminate 200,000 claims on WCB because they're no longer going to be recognized.

The first presentation talked about ergonomics. I'll tell you something, if you don't have to worry about repetitive strain injuries, you don't have to worry about ergonomics. Some employers are going to take it very seriously and are going to look at things like ergonomics. But that's only a very short-term proposition, because what's going to happen now is that for the bad actors in the system, the ones that don't care about workers, that only look at the profit coming out at the end of the day, there's no incentive there for them to improve, so the good employers are going to say, "I have to compete. We're on this competitive treadmill that we're all talking about, that at the end of the day the profit is very important; we think about the bottom line."

I'm going to tell you something. In the year I've been chairing this committee, I haven't talked to any employers that have gone bankrupt, but I've talked to an awful lot of injured workers who lost everything they had. I don't think we want to accept that.

The Occupational Disease Panel is something we should all hold near and dear, because it gives workers the opportunity to get research on workplace-related diseases. This is something that's world renowned, but it's also something we use as a tool to make sure workers understand the hazards out there. We can do WHMIS classes till we're blue in the face; the bottom line is that we have to have this research so we can do our job.

I don't know how many people in this room know much about Windsor, but I'm going to tell you, you are probably in the most caring community in Canada, probably one of the most caring communities in North America, because of the things we do with United Way. We have a community that believes in taking care of the people who need taking care of. An awful lot of people are going to be getting a benefit of WCB and the changes in Bill 99 who really don't need protection, because we've got employers out there that always want to categorize themselves as victims. But the very victims I deal with, my friend Tom Noble, are the victims of workplace violence, not the victims of workplace accidents. It is violence, violence in any form, probably in the worst type of form.

I was very touched last week because I watched the news reports about the Special Olympics in Chatham. I think most of you have seen it. Very noble, some of the attitudes from some of the participants, competitors none the less, but competing in such a way that when the person next to them who was competing stumbled, they stopped and helped them up along their way. I think all of us were very affected. We talk about how we really enjoy that attitude. We talk about, "Wouldn't it be wonderful if we had a society where across the finish line we all got there together." Bill 99 doesn't do that. When we as injured workers and future workers stumble, we're going to get kicked. We're not going to be helped across that finish line.

**0950**

A lot of times those people will not return back to work and they're not going to be given an opportunity because they're damaged goods. Nobody's going to want them with 9% unemployment, which fluctuates from 9% to 10%. Just put yourself in the mind of an employer and somebody came along to you and said, "I need a job, but I've been on compensation." With the number of people you get a chance to select out there, aren't you going to take the most able-bodied person you can? Are you going to take it in your heart and say, "I'm going to give somebody an opportunity because they're going to be good workers"? No, you're not going to do that. You're going to take the best that you can possibly get because you might feel that these people are limited or damaged in some capacity.

In closing, I guess to sum it all up in just maybe a short phrase, the biggest tragedy and insult to humanity is indifference, and that's what I feel this government is doing. They're being indifferent to people and that's what the name of the game is all about.

That's the kind of society that we want to build in this province. You're aren't going to allow us to do that. I want to make sure that this gets forwarded. There's a copy here of Return-to-Work and Bill 99, Tyranny that Won't Work. I've got 50 copies here. I ask you to please accept these, read them on your way to London so that you've got an opportunity to see something put together on the area of return to work.

I will pass the microphone on now to Tom Noble.

**Mr Tom Noble:** My name is Tom Noble. I'm an injured worker and I didn't have the choice of being an injured worker. You people don't know what it's like to be in this situation. I have got letters from you — where's Mrs Witmer today? They promised the thing — where's Cam Jackson? What's going on with this government? Where's the fairness of this government? Mr Cam Jackson called me on his cell phone and said there's nothing to worry about.

Nothing to worry about? I've been in and out of hospital for the last 21 years. Do you think this is right? You're lucky I'm not a bad guy. If I wanted to be bad guy, you'd know what a bad guy is like. You think a mob is a mob. You guys are creating a mob. Start being sympathetic to the injured worker. My children had to put up with this, and my grandchildren. I'm sick of it. I've got a letter here from Mrs Witmer stating there's going to be fairness in compensation. There's no fairness here. Bill 99 is no fairness. It's taking away more.

You people should know the situation. You're human beings. We are not dogs and cats who have to fight among each other. If you were human beings — all you're worried about is corporate greed. It's got to stop. Enough is enough.

I've been in hospital years and years and I'm on all kinds of pills and medication. This isn't the life I had chosen. I wanted to make a living. I didn't rob a bank. My name ain't Bonnie and Clyde. Okay? Bonnie and Clyde got movies and made millions of dollars off royalties. I did not make anything off workers' compensation. It's bad enough when you've got to take your little cheque every month, you pay your rent and you pay your car insurance. Try it, people, see what it's about. Thank you.

**The Chair:** Do you have additions to your presentation?

**Mr Mike Lawson:** Yes, right here. My name is Mike Lawson. You never get a chance to hear from families that are affected by workplace injuries. With me here I have Sherri Ladouceur and Sherri's brother, Mike Ladouceur, and Sherry's boyfriend, Dave Bonanno. Both Mike and Dave were working in non-unionized shops. You talk about you're going to use reliance on internal responsibility and so forth. When investigators came out after their injuries, they hid and got rid of the damaged material that caused their closed-head injuries. Sherri would like to talk to you a bit about being in the middle of two injured workers and the disruption of her life and everyone around her.

**Ms Sherri Ladouceur:** I'd just like to let you know that my brother remained in a coma for 32 days, and he was given his last rites to live. The trouble that the injury has caused in our family, we've separated and come back together. For the past three years, Michael's been back and forth in hospitals from London to Windsor. They said he'd never walk, he'd always remain in diapers and he'd need to be fed and cared for 24 hours a day and that he'd probably never come home.



When he came out of his coma, he knew no one. He recognized none of the family and he was a totally different person, someone we didn't recognize either. We're still getting to know him after all this time. He has a very difficult time managing his money. Our family has to take care of him. He pays his mortgage, he pays his bills and my family buys his groceries. We take him out. For a long time he wouldn't shower. He was afraid he was going to melt, he was afraid he was going to drown. Just the little things make life so difficult for the whole family. He's very compulsive. If he sees something, he automatically wants it, a magazine, a chocolate bar, and he eats more junk than good food any more. He doesn't realize how important it is to take care of himself and get himself back.

He angers easily. Repeatedly he and my mom have gotten into fist fights where the family has to intervene and it pushes Michael away a little more every time. He's left all of his friends. No one wants to be around him because of the different way he acts and he says silly things that don't make sense. He has a short-term memory now. If you tell him something, he may know it now, but tomorrow he will not. He is supposed to use a day planner, but he forgets to do that.

Michael went through a stage when he was very suicidal. He attempted it twice. He used to call me every other night at 3 or 4 in the morning to say goodbye. We've been there and it's the hardest thing that any of you people can imagine, to not know somebody who was there.

My boyfriend, on the other hand, hit also by a safety device, has headaches beyond belief to the point where he's vomiting. His medication is very costly and we're having trouble with compensation. They'll only cover his medication for a year. He has a bad short-term memory also. His equilibrium is off. He used to be very active in sports and now he can't participate whatsoever. I have a five-year-old son and it's very discouraging for him because he can't participate in anything with my son. He gets headaches sometimes because of the lighting or sometimes because of just being overwhelmed by a lot of people, and his brain injury has caused many other health problems.

I just want to let you know that not only the injured workers' lives change, but our family has been deeply injured as well. Please, somewhere in your heart find it possible to kill this bill.

**The Chair:** Thank you very much. That concludes your presentation time. Thank you for bringing your perspective before the committee this morning.

1000

ONTARIO ENGLISH CATHOLIC  
TEACHERS' ASSOCIATION,  
ESSEX SECONDARY UNIT

**The Chair:** I'd like to now call upon representatives from the Ontario English Catholic Teachers' Association, the Essex secondary unit. Welcome to the committee.

**Mr Rick Meloche:** Good morning. My name is Rick Meloche. I'm president of the Essex secondary unit of the Ontario English Catholic Teachers' Association. With me this morning sharing my presentation are Rich Prophet, from the provincial executive, and Victoria Hannah, from the provincial staff.

I won't insult your intelligence by reading my brief, although I'm not sure how intelligent some of you are. What I would like to do, however, is highlight a few sections, if you would follow along. I assume you have it before you.

In the introduction, 1.02, the unit is strongly opposed to several sections of the act as it is written. We are committed in rejecting this document and to maintaining a fair system for injured workers, who are in fact victims.

In point 1.07, something I think you should pay attention to very clearly, the unit firmly believes that in a democratic Ontario, one that we are slowly losing, legitimate government action requires the consent of the governed. I don't think that's something that has been taking place in the last little while.

Under "Public Hearings," 2.01, the unit strongly protests the lack of meaningful public hearings on Bill 99. I can't imagine how I was granted standing. I guess you must flip a coin, roll the dice; I have no idea. But to come to Windsor and have the number of people who wanted to present ignored is terrible.

On page 2, under "General Concerns," I have a number of concerns. I probably could have listed hundreds of them. I pulled out only the ones that are most relevant to me. Point 4.03 is the one that really upsets me. Bill 99 allows the WCB to override your doctor's treatment if it costs too much. I can't imagine putting someone in a position where if the cost is prohibitive, the treatment could be stopped.

On page 3, "Specific Concerns (By Section)," again, if I was to go through the entire act and pick out the sections that are offensive to injured workers, I could probably just take the act and toss it in your lap. What I did, however, was pick out a few of them that are most upsetting. In section 1, the purpose clause removes the references to fair compensation and rehabilitation services. We are looking again at the almighty dollar. We're not concerned with fairness; we're concerned with how much it costs and I guess how much your government can save.

In section 12, other than traumatic events, occupational stress is not compensable. As a matter of fact, stress is the fastest-growing form of disability.

On page 4, section 13, benefits for chronic pain will be limited or excluded by regulation that will provide benefits for chronic pain based on normal healing times, which means you're going to take the average of the healing times and look at that as being the length required. I beg to differ. There is no normal healing time for any chronic pain or any disability. It's all very individual.

In one part of section 21, injured workers must file their claim with the board and are required to provide a copy of their application for benefits to their employer. I believe

this will reduce the claims, but it certainly will not reduce the injuries.

Finally, in section 43, in calculating wage loss, the board will take into consideration what a worker may be able to earn in suitable employment. The board will not take into consideration whether or not suitable employment is available.

Finally, under "Noteworthy Statistics," 7.02, the Ontario WCB is one of the top 10 profit-making corporations in Canada. On point 7.03, in 1994 the uncollected employer bad debts were \$173 million. Perhaps one reason why this program has not worked in the past is that you are allowing employers to not pay their fair share.

I'd like to conclude my part of the presentation by bringing you back to page 1, 1.03. The repeal of Bill 79, the repeal of Bill 40, and the passage of Bill 26, Bill 34, Bill 104 and most recently Bill 136 capture the direction of present government policy. I have been fortunate enough to be a presenter at Bill 104 and Bill 34, and especially at 104 I felt the hearings were a sham. I am not so sure that these are not a sham as well.

I think we have before us a government that does not listen to our concerns. I'm hoping that perhaps at some point you will be sympathetic to the cause of the Ontario people. We depend on you. We need you. You're letting us down.

**Mr Richard Prophet:** As indicated earlier, my name is Richard Prophet. I'm a member of the Ontario English Catholic Teachers' Association. With us today is Victoria Hannah, who is a staff officer of OECTA. The local association has taken a position with which we concur, but in the event that the passage of the bill is not postponed, we have presented alternative recommendations.

We appreciate the opportunity to utilize a portion of the time that has been allocated to the Essex secondary branch affiliate of OECTA so that the government may respond to amendments or concerns about the currently proposed legislation. What we do not understand, however, is how the government could not allocate 20 minutes of time to a group that represents 35,000 people, who represent in reality 135,000 teachers in the province of Ontario. This Ontario government would not allocate 20 minutes of time to such a large number of workers who are affected greatly by the passage or the postponement of this legislation.

You have in front of you the submission which indicates 20 amendments that the association believes are vital to enshrining the rights of workers to a healthy and safe work environment. Unfortunately, the way the legislation is written at the present time, it is not about the enshrining of workers' rights, but it is about the erosion of workers' rights and unfortunately has a great negative impact on all the workers; very little positive reinforcement for the workers.

In reality, there are four areas I would like to focus on during this presentation, which immediately come to the forefront when addressing areas which require improvement in the Workplace Safety and Insurance Act. The first

is the area of compensation, which is the most critical component for the injured worker.

The association recognizes the need for financial responsibility. However, it should not be totally on the back of the injured worker, as the injured worker is one who is entitled to a fair and reasonable increase in benefits from year to year. However, with compounding etc, this erosion has a great negative impact, to the point where 15 to 20 years down the road it is nothing like what was originally discussed, and for such a paltry amount at that time. In fact, now with the deletion of fair compensation, the overriding principle is fiscal responsibility, with no regard to fair compensation whatsoever.

#### 1010

Consequently, the association recommends that the government amend the indexing formula to provide for the current level of monetary support to both the worker and, in the case of death, their survivors.

Closely related to the concept of the indexation of benefits is the maintenance of benefits. Employers should not benefit from negligence on their part, such that a worker who is permanently injured would collect a reduced pension. We do not wish to see a reduced financial status, something that's going to be further reduced with the removal of the pension benefits. In light of this oversight, the association would recommend that the government amend proposed Bill 99 to eliminate payment by the injured worker for maintenance of the pension benefits.

The second area which causes much concern is in part V, return to work. Here the association believes that a sound and fair return-to-work policy should be developed by the worker and the employer. This process would ensure that no intimidation or harassment would take place on the part of the employer. Unfortunately, we have seen numerous instances where the employer has attempted to coerce the worker to return prior to medical approval being obtained. In the field of teaching this has happened numerous times; teachers have been called and told to return to the workplace because the class is in such a state of disarray or, "This is happening in your work site, and you are much better here." Unfortunately, that is merely coercion or intimidation.

Resultantly, the association has seen it necessary to recommend that the legislation not provide the employer with unfettered rights of contact with an injured worker who has not returned to work. Too often, we have seen employers throw down pieces of paper, form 7, and demand that they be signed within X number of hours if there is going to be any type of compensation whatsoever. This is very simply intimidation on the part of the employer. Tied to this recommendation is whom the employer can contact: Who can be objective in communication with the employer yet not be intimidated? Recommendation 14 states that when a worker, due to a physical or mental condition, is incapable of returning to work, the employer will have contact with the employee through the employee's legal representation.



Another major area which requires review is in part IV, entitled "Injury and Disease Prevention." In the area of injury prevention, the Ontario English Catholic Teachers' Association has been very prominent in promoting the education and training of health and safety representatives as a joint effort between employees and the employer. Further, we have provided various health and safety programs to teachers and board representatives for a number of years. Educational studies indicate that there's a high correlation between ownership and commitment, extremely high.

As a result of this commitment and success in its participation in the development of programs, the association would recommend that the government ensure that any entity which is accredited to provide training is bipartite in the composition of its governing body. Linked to this idea of shared ownership of concepts is the belief that where the association and the school board have jointly developed a number of policies, procedures and practices over numerous years on a variety of issues, the advisory council, if it is established, be bipartite in composition.

The fourth area where the government has a responsibility and duty to respond to recommendations is the employer's obligations. The association is of the opinion that the government should establish mandatory standards for both the certification of health and safety representatives and the accreditation of employers. If an employer does not maintain the mandatory standards, the accreditation of the employer must be revoked. We further believe that there presently are few deterrents for an employer being negligent in creating a safe work environment. Following the example of the media — whether in written or viewed format, they report individuals who do not adhere to the law. This association follows a similar recommendation, that the government amend the proposed Bill 99 to provide for the publication on a quarterly basis of all employers who are in default of workplace safety and insurance premiums. That would be an onus but also an incentive for the employer to not only meet the standards but to create a healthy work environment.

In summation, these recommendations would ensure that the Workplace Safety and Insurance Act would be exactly what the name implies — it would be a safe environment — but it would not be one in which profit is allowed to override the provision of a safe and healthy work environment.

I'd like to ask Vikki to give some examples of a provincial overview, how this is going to have a negative impact on our teaching colleagues.

**Ms Vikki Hannah:** I have to concur with one of the previous speakers, who indicated that as a staff officer he has been working on this particular piece of legislation for over a year and understands its complexities. It has taken this association also a considerable amount of time, among everything else the government has been doing in the past year in terms of impending legislation and downloading on workers across this province.

The number of changes in here and the magnitude involved in this particular act, both in the restructuring and reorganization, certainly would confuse the most learned worker, let alone the staff officers and the bureaucrats who deal with this particular legislation. That in and of itself is problematic, and the timing is also extremely problematic.

One of the things the Ontario English Catholic Teachers' Association has done over the years is that it has taken a very active role in providing training programs for both employers and employees, for the teacher representative on joint health and safety committees. My particular role in the provincial organization is to assist in the training of these across the province and assist in the 77 school boards that previously existed in terms of developing these programs. We have tried to work very collaboratively with the school board officials in developing programs and have been very successful.

It is disappointing that when the government eliminated the Workplace Health and Safety Agency and incorporated some of the duties and responsibilities of that agency into this act it did not incorporate some of the mandatory requirements with respect to the standards for certification, for the length of program and for the fact that any delivery organization should be bipartite in nature and should be equal in value for both worker and employer. Always, the worker is at a disadvantage.

Also with respect to teachers, the elimination of the Occupational Disease Panel is of particular concern. The general public and in fact the government probably believe that since teachers work in a white-collar environment, we don't suffer any kind of problems with respect to work injury. Someone should have told the people where asbestos was in the schools who over the years have become ill with and even died of those particular diseases that the white-collar environment is not as safe as it's given to be.

The other aspect that the Occupational Disease Panel has been studying, which of course concerned teachers, was air quality. That has become a predominantly difficult thing, both with old schools and with the new schools being built that are closed environments and have new-building symptoms. None of the amendments in the act address these types of concerns, illnesses that come forth from sick building syndrome.

The issues of ergonomics and of stress and violence in the workplace are also of particular concern to teachers, and these have been eliminated from the act.

Finally, return-to-work policy should be through a joint effort. As schedule 2 employers, we have worked very hard to develop exemplary policies. These policies require time, effort and commitment on the part of both workers and employers. The current bill puts expediency rather than quality as a priority in return to work.

Last, the bill belies the purpose of the original premise and principles of workers' compensation. Teachers were only permitted under the health and safety act, and therefore in many instances under workers' compensation, in

1984. This particular title demonstrates that the workplace is the key, not the worker. Workers' compensation and compensation should be for the worker, not for workplaces. Workplaces do not suffer; workers do.

**The Chair:** Thank you very much for your presentation. We thank all of you for taking the time to come before us with your advice.

1020

#### EMPLOYERS' ADVOCACY COUNCIL, WINDSOR CHAPTER

**The Chair:** I now call upon representatives from the Employers' Advocacy Council, Windsor chapter. Good morning and welcome.

**Mr Eric Bialkowski:** Thank you very much. Ladies and gentlemen, my name is Eric Bialkowski. I'm with the Windsor chapter of the Employers' Advocacy Council. The Windsor chapter of the Employers' Advocacy Council appreciates this opportunity to participate in the discussions on Bill 99.

The Employers' Advocacy Council, founded in 1985, is a non-profit volunteer organization of employers across Ontario. Our mission is to reduce the workers' compensation costs of employers by influencing constructive change to workers' compensation in Ontario and through education of employers on all aspects of workers' compensation and workplace health and safety.

With over 1,700 members in nine regional chapters across Ontario, the EAC represents a broad cross-section of Ontario's diverse economy. Our members include small business owners employing less than a handful of employees and large multinational organizations. We also have many public sector employers and employers from schedule 2.

All these employers have come together under the membership of the Employers' Advocacy Council to voice shared concerns about the financial viability and cost of the workers' compensation system, frustration, and lack of confidence in the system, and a common desire to effect constructive and sustainable change. For the past 12 years the Employers' Advocacy Council has been representing the views and concerns of the employer community on workers' compensation issues. During this we have striven to develop solutions and alternatives that are constructive and achievable. This includes our participation on all the advisory groups and committees established by the Workers' Compensation Board and the government on workers' compensation issues. In 1992 the Employers' Advocacy Council represented the employer community on the bi-partite steering committee of the chair's task force on vocational rehabilitation and service delivery and, under the Liberal government in the late 1980s, participated in the green paper advisory committee.

In 1993, under the New Democratic government, the Employers' Advocacy Council played a key role in the development of the employer proposals for workers' compensation reform developed by the business steering com-

mittee in support of the Premier's Labour-Management Advisory Committee.

The Employers' Advocacy Council also played a lead role within the business community in developing and marshalling employer opposition to Bill 165 implemented under the previous New Democratic government.

It remains apparent to each and every one of us that the need for reform of the workers' compensation system has been generally accepted. Previous governments have undertaken initiatives to reform, but it is our view that this government is committed to restoring Ontario's workers' compensation system. The Employers' Advocacy Council reaffirms their commitment to work with the government and the Workers' Compensation Board to improve the workers' compensation system for the benefit of Ontario employers and their employees. We resolutely support the continuation of an affordable and viable system of workers' compensation which provides protection to employees and employers impacted by workplace accidents.

The Employers' Advocacy Council wishes to ensure that the changes are durable and in the interests of improving the entire system. It would be a great waste if the changes emerging from this process of reform were to be undone by a future government for political reasons. The consensus of the Employers' Advocacy Council membership is one of support for Bill 99, with specific changes. We are of the view that the constructive comments and recommendations we have proposed will add to the overall effectiveness of the reform.

It is my understanding that members of this committee have already received a copy of our provincial submission. Today it is my intent to emphasize one area of that review. A major concern to members of the Windsor chapter of the Employers' Advocacy Council is the definition of "accident." Section 2 of the bill reads:

"In this act,

"'accident' includes,

"(a) a wilful and intentional act, not being the act of the worker,

"(b) a chance event occasioned by a physical or natural cause, and

"(c) disablement arising out of and in the course of employment; ('accident')."

Despite our support for the reform process we are disappointed that the government did not redefine the definition of "accident." We are cognizant of the government's concerns that a new definition could cause greater uncertainty and generate litigation. The Employers' Advocacy Council remains resolute that the government may miss their chance to fix the system by failing to act on this issue. The Employers' Advocacy Council proposes that clauses 2(1)(a), (b) and (c) remain and that the following be added: "Benefits are payable where the employment is the predominant cause of injury or illness."

Our membership supports that where employment is the predominant cause of injury or illness, workers' compensation benefits and services should be delivered in an efficient and expedient manner. On the other hand, injuries



and illnesses in which the predominant cause cannot be linked to the employment are entitled to other appropriate health care outside of the workers' compensation system.

Employers oftentimes receive cost relief through the second injury and enhancement fund for injuries and illnesses in which employment is not the predominant cause. However, there is still a price to pay for all stakeholders.

First and foremost, these additional claims bog down the system in prolonged investigations, appeals etc, taking away from the efficiency of the service. Employers pay a great deal of money towards employee benefits, and, like any other consumer, we expect the best value and service possible for our money. At the same time, the majority of employers expect that when an employee is injured at work they be treated with respect, dignity and, most of all, with compassion and understanding. This employer-funded system should provide prompt and efficient service. Waiting three months for an injured or ill employee to receive benefits is just unacceptable when mortgages have to be paid and food has to be put on the table.

1030

I have had numerous experiences with employees who have found themselves caught in the workers' compensation system even when the company has no issue at dispute.

It is our opinion that by clearly defining the term "accident," claims could be processed through the most appropriate insurance plans.

A personal experience is a claim in which an employee began exhibiting signs of carpal tunnel syndrome in their dominant hand. The employee operated a lightweight press. Ergonomic studies revealed that it was highly unlikely that the employment was the predominant cause of the symptoms. Work-relatedness became the issue.

Over time the employee began to develop pain in other areas, such as the wrists, elbows, shoulders and legs. A claim was submitted to the board by the employer. The employee waited three months for a decision. In the end, the company was granted relief through the SIEF at 90% because medical information provided to the board by the family practitioner indicated this employee was suffering from a serious and debilitating medical condition.

In another example, a young man within his probationary period exhibited signs of psychological problems. He was depressed, subject to crying and fears. This employee later claimed a work-related injury to elbows, shoulders, low back and wrists and went off work. Again, ergonomic studies questioned the validity of work being the predominant cause of the complaints. The Workers' Compensation Board allowed this claim, with the exception of the low-back complaints. The employee was unable to return to modified work and later claimed that his injuries caused a psychological condition that did not allow him to return to work. This was subsequently denied by the board. Had the definition of "accident" been clearly defined, this same employee would have received benefits and appropriate health care through other insurance means, and in a more expedient manner. The time and effort spent by the Work-

ers' Compensation Board, the employer and the employee could have been used in a more productive manner, such as expediting claims in which employment was the predominant cause of the injury or illness.

If the definition of "accident" is addressed, there would be no need for the presumption clause in subsection 12(2).

As I stated at the beginning of my presentation, I am presenting the views of the membership of the Windsor chapter of the Employers' Advocacy Council. I do so in the spirit of continuous improvement, improvement to a system that in principle is designed to benefit both employers and employees by reducing the impact of workplace accidents. It is our opinion that all stakeholders must work together to fulfil this mutual goal. On behalf of the membership of the Windsor chapter, I thank you for your attention.

**Mr Patten:** Thank you for your presentation. It's good to hear from an employer group that shows some compassion or attempts to appreciate the plight of the worker. But where I'm coming from is that we're talking about a workers' compensation program now shifting to an insurance board arrangement. I think in that shift is a shift of emphasis. I think it is an attempt to be, let's say, less costly to employers, at first blush perhaps. But as we've heard from various representations throughout Ontario so far, it appears there's going to be a lot more litigation taking place. In the end, I suspect we're going to have a mess in many areas, and that will not help employers. It's quite obvious it certainly isn't going to help the workers who are injured, because they've lost benefits, they've lost appeal processes, they've lost certain rights. That will push anybody who is in need of help to systems other than the board itself.

Do you think the current bill, the bill this will replace, is too generous in its benefits to injured workers?

**Mr Bialkowski:** I wouldn't say it's too generous. Our major concern is the expediency of filing and processing a claim and getting benefits to a worker. To repeat, it's very frustrating for an employer, who does pay a large amount of money for workers' compensation insurance, yet it's the worker who winds up waiting for a decision from the board. They have up to 12 weeks to make a decision. In the meantime, other insurance carriers won't look at the claim until a decision has been made. What is this worker supposed to do in that three-month period? That is our major concern with the definition of "accident." We feel that if it was brought together and defined more clearly these insurance claims could be processed through the proper insurance company and at a much quicker rate.

**Mr Christopherson:** Thank you, Mr Bialkowski. We heard from a colleague of yours in Thunder Bay who said the WCB should be required to consult with business and labour before they make any changes. He was also very critical of the fact that the government hadn't allowed input into the development of Bill 99. I wondered if your organization had been consulted at all on the development of Bill 99.

**Mr Bialkowski:** I'm really not sure how to answer that question. I can tell you that there was a provincial paper submitted on Bill 99. The rest of the question I would direct to our provincial office, to our director there, who may be better able to answer that question.

**Mr Christopherson:** Interestingly, the individual who represented your organization in Thunder Bay is a former member of the board himself and spoke very strongly to the need. Do you agree that in the future, since they haven't done it in the past, and given that there are a lot of regulations and policies about to be developed — are you prepared to go on record and say that the WCB should be directed by the government to consult with both business and labour before any of these regulations or policies are decided?

**Mr Bialkowski:** Are you speaking of WCB or board policy?

**Mr Christopherson:** Both. I'm talking about both the government regulations and the policies the board will be developing.

**Mr Bialkowski:** Definitely, with the policy being developed at the board, I believe there should be input from all groups. I believe policies should be determined at the board of directors of the Workers' Compensation Board.

**Mr Christopherson:** Given that there wasn't proper input in the development of Bill 99, do you think the six days of hearings are adequate?

**Mr Bialkowski:** I'm unable to answer that question. I'm not sure if there was ample time previously to submit to the government.

**Mr Christopherson:** I can assure you that no labour representative in the province was consulted. Even if business was consulted — I don't think they were either, except a select few — labour didn't have any say. Do you think the six days the government has offered up are adequate?

**Mr Bialkowski:** I believe that if there has been ample time to submit, in the six days everyone is getting a chance to voice to this government what their opinions are, both labour and employer groups.

**Mr John Hastings (Etobicoke-Rexdale):** Sir, thank you for coming in and making your submission. Even if this government accepted the expanded definition that your organization advocates in this submission, and assuming that would speed up how a claim gets adjudicated and settled, I'd be curious to know how members in your organization would deal with the existing lack of customer service to injured employees. Even if you have a complex case, even if you have doctors who have a large medical situation in terms of patients, how would you specifically inject a more customer-focused culture into a highly bureaucratic, non-functioning organization, in a lot of people's eyes at the present moment?

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**Mr Bialkowski:** That's very difficult to answer simply because it is a very complex organization. As I mentioned before, some claims take forever to be adjudicated, even with a push from the employer. I personally on a number

of occasions have I've called the board and asked: "What's taking so long? Can we get a decision? Can we have it in writing so we can send it to our other insurance carrier?" if it's not a work-related injury. Getting information like that from the board takes a long time. It is hoped that with the change of the definition, it will be more clear and it will be a lot easier for us to process the claims more quickly.

**Mr Hastings:** Have you got any specific thoughts on how you could get a little more friendly, prompter response to even the most simple type of claims, physical injury claims, where there is no dispute by the employer and everything is copacetic?

**Mr Bialkowski:** We find those types of claims process quite quickly, if it is an open and shut case. If it's an accident that's clearly an accident occurring in the workplace and arising out of work, those claims we don't typically have a problem with. They have an adjudicator at the board who will look at those types of claims and process them very quickly. It's usually the claims that are more complex and aren't so defined that make it more difficult for the Workers' Compensation Board, as well as for the employer and the worker.

**The Chair:** Thank you very much. That concludes your time. We thank you for bringing your advice to the committee.

## LEGAL ASSISTANCE OF WINDSOR

### LEGAL CLINIC BILINGUAL

**The Chair:** I now call upon representatives from Legal Assistance of Windsor. Good morning, and welcome to the committee.

**Ms Marion Overholt:** My name is Marion Overholt, and I am a staff lawyer with Legal Assistance of Windsor. With me is Aaron Atkinson, a first-year law student at the University of Windsor, who is working at Legal Assistance of Windsor this summer; also, Patricia Broad, who is a staff lawyer with the bilingual legal clinic in Windsor. Legal Clinic Bilingual had sought an opportunity to present to the committee and, like so many others, was unable to obtain a speaking time, so we asked them to join us in the presentation.

By way of an opening remark, I'd like to specifically address the government members. I was watching your faces, Madam Chair and members, gentlemen, when the injured workers were speaking. I saw that you were struggling to keep control because of the emotional impact and the incredibly tragic stories that were related to you. I saw that today.

I've read the written record of these hearings, and I am here to tell you that the record indicates unconscionable conduct on the part of the government. There have been so many people who have tried to make submissions who have not had the opportunity. There have been legitimate, honest, very important questions asked of you that have not been answered. I am saying to you that your work will not be done here when you struggle through the rest of



these proceedings and move back to the Legislature, because what you need to be concerned about is your legacy. The legacy you will be leaving is one of greater victimization and violence in the workplace. I ask you to trust your guts, because it was clear to me they were wrenching when you listened to those victims. Trust what you feel and go back to this government, because you know what you're doing is not right.

I'll now ask Mr Atkinson to make our presentation.

**Mr Aaron Atkinson:** Since 1974, Legal Assistance of Windsor has been supplying the unique combination of legal services, coupled with social work counselling, to low-income members of the community. As most of our clients depend on social assistance, we have an intimate understanding of the legal and social problems these recipients face, as well as the problems that plague the system itself.

While the government hopes to lessen the numbers dependent on social assistance, this initiative seems in conflict with Bill 99. Premised on several critical assumptions characterizing the injured worker as lazy and over-compensated, Bill 99 may reduce claims, but injuries preventing work will remain. In many cases, injured workers will be left without financial support should they choose to heal their injuries. Rather than holding employers accountable for poor working conditions, the taxpayer public is left to fill this financial void.

Not only does this result in further burdens on public funds; the recipient of social assistance often faces myriad further problems, both legal and social. Often, the receipt of assistance is humiliating to those accustomed to earning a higher employment income. General welfare itself is grossly inadequate. A four-person family receives \$602 for shelter and \$516 for everything else. Usually, the rent on a decent three-bedroom house will consume more than the shelter allowance. As vital necessities become subject to greater demands, legal and social disruptions follow quickly.

In order to circumvent these cyclical problems, we wish to highlight some of the most troubling aspects of Bill 99 from our perspective.

The first deals with chronic pain and proposed healing times. In previous submissions, you have heard many medical experts warn of the dangers of setting fixed healing times for "typical" patients. Should the healing time be prolonged, the injured worker is forced into the precarious position of choosing to work with a lagging injury or allowing the injury to heal while receiving public assistance.

The situation is further aggravated for non-unionized workers, who may be pressured by their employer into returning prior to a full rehabilitation. Should the worker suffer the same injury again, he or she will be denied the pain management program, which itself is inadequate. Employers will no longer be compelled to correct the ergonomics of their facilities. While claims will decrease, the injuries will continue, but at no loss to the employer.

Second, discontinuing stress benefits: Bill 99 will eliminate all claims related to mental stress, the presumption being that there is no direct link that can be drawn between a worker's employment and his or her mental disposition, unless of course it is a sudden and traumatic event. While it is acknowledged that mental stress does not form in a vacuum, the Ontario Psychological Association has previously submitted that diagnostic criteria can be developed to document injuries of mental stress. We must abandon the notion that all injuries can be pre-dated to a particular event in the same way that one can determine the date of a sprained ankle.

By denying compensation to workers suffering from mental stress, the problems will not suddenly disappear. Worker morale will suffer, with a consequent decrease in worker productivity. With little emphasis placed on the improvement of the work environment, continuing problems such as sexual and racial harassment will not receive the attention necessary. Of note, in a recent survey by the OFL, women workers cited mental stress and repetitive stress injuries as the two highest-ranking health issues they face. Women are particularly vulnerable to these types of injuries, given their high concentration in small-scale manufacturing and office jobs.

Now workers who suffer these injuries will be forced on to social assistance if the injury no longer allows them to work. Consequently, their wellbeing will deteriorate further. Should long-term treatment be necessary, the publicly funded health care system will be forced to deal with a problem more properly attended to by employers.

Due to the continuing bar to any cause of action, employers are apparently free of all liability when these injuries arise. Section 25 of Bill 99 promises to be the subject of numerous court challenges and costly litigation as this grave injustice is addressed. Perhaps the problem could be remedied by allowing for stress claims, with specific diagnostic criteria being set up.

Third, we oppose the decreases in regular benefits and indexing. Bill 99 aims to decrease costs by cutting benefits from 90% to 85% of net average earnings. Coupled with decreased indexing and the labour market re-entry plan, benefits promise to be substantially decreased if a longer-term injury is suffered. One must first recognize that the current 90% rate fails to allow for the added costs that accompany a workplace injury, both pecuniary and non-pecuniary.

Determining the fallout from this change is not difficult. The 5% decrease, plus the lesser cost-of-living index, will gradually erode purchasing power over time. Eventually, social assistance is again required to provide necessities.

Further, an injured worker who is deemed to receive an income from a job that isn't necessarily available due to a labour market re-entry plan, faces drastic cuts in benefits. Seasonal workers and those new to the workforce face acute difficulty as their net average earnings depend virtually on the whim of new board mathematics. Seasonal workers face lower benefits due to the inconsistency of

their income. With decreased net average earnings, social assistance becomes at once the only option for survival.

#### 1050

Fourth, filing a claim: Provided a worker has an injury where compensation is available, Bill 99 requires that all new claims be filed by the employee. This scheme poses particular problems for non-unionized workers, especially if the form is supplied by the employer. Depending on the nature of the injury, a worker may be pressured by his or her employer to forgo a claim and receive unemployment insurance. Workers not fluent in the official languages will no longer be able to have their doctor file a claim as well. At the same time, the employer is under no obligation to reveal the accident report to the worker.

Regarding the limitation period, this also promises to decrease claims and frustrate injured workers. Workers may be diagnosed with various injuries or diseases only to discover too late that it is work-related. With no incentive to improve ergonomics, repetitive stress injuries with a long onset may be effectively barred as well. Once the limitation expires, social assistance is the alternative.

Fifth, dispute resolution: While Bill 99 hopes to foster cooperation between employer and worker, the non-unionized worker will suffer due to his or her lack of bargaining power. The board only becomes involved when a complaint is lodged. In order to be successful in this complaint, the worker may have to acquire legal counsel at an earlier date. Mediation is proposed in some instances, but again the legislation does nothing to address the inevitable imbalance in power between the two parties.

Further, it is troubling that the tribunal will be bound by board policy when it makes its decisions. When the legislation and policy inevitably conflict in some instances, costly judicial review will be the only outcome, and again only available to those with the financial resources to do so. This added time and expense could easily be avoided by allowing the tribunal to act as an independent judicial body.

Finally, we ask that the government reconsider its approach to reducing compensation claims. More focus is necessary on prevention. Employers must be encouraged to invest in improving their work environment. Employers can once again be held accountable for injuries suffered by workers while at the same time reducing the number of compensation claims. While harsher standards will require a further investment of capital, this added expense will be borne by the proper entity, not the taxpaying public.

The government has warmly embraced evidence-based medical care. It must also acknowledge empirical research in the field of injury prevention. By focusing on employers and industries with recurring problems, the focus can be sharpened as to which employers have conditions most in need of improving. Any partnership between employers and workers seems unlikely in this regard unless equal representation of workers and employers is assured on the board of directors. The interests of all must be allowed.

Further, we ask why the government is cutting worker benefits while cutting employer premiums at the same

time. It is troubling to understand why employers should not also be held responsible for paying down the unfunded liability. Premiums are not a tax; they come as a cost of doing business. It is absurd to think that employers do not understand that human labour requires a significant investment, part of which covers one's liability for injury. It is also time that the government acknowledged that the unfunded liability is not public debt. It is puzzling that the government would choose to swell the ranks of welfare recipients and raise public debt as workers with legitimate injuries are left with no other recourse.

We recommend that the government allow further hearings so that even a small fraction of the thousands of workers denied a voice in this debate can be given a chance to speak and provide a face for the often-referenced injured worker. Only after this recognition is given to the very people this legislation so drastically affects will the democratic process be vindicated.

**Mrs Marion Boyd (London Centre):** Thank you very much for coming. I'm very interested in your position, which is very strong, that when people are not found eligible for compensation, they end up on social insurance, because it certainly sounded, from the previous presenters, as though they simply go on to a fallback long-term disability. That's not my experience, not in my constituency office or in any of the work that I've done. Would you comment on that?

**Ms Overholt:** Certainly with respect to unorganized workers, there aren't collective agreements where there is any kind of protection for them. Should they become injured at work, they are relying solely on workers' compensation. Now we have the dilemma created by this government that when these injured workers turn to welfare for support, we have a drastically redefined disability benefit which many injured workers will not qualify for. The alternative then will be welfare, and this government is intent on introducing workfare, which will take these injured workers back into workplaces and being made to work for their benefits with no understanding of their limitations.

We're very, very concerned that they will be reinjured. There isn't that support. The whole idea of workers' compensation was to provide for benefits when a person was injured, and the erosion of this plan at the same time that the government is redefining our social support is really a frightening prospect for workers.

**Mrs Boyd:** It has to be taken in the context of all the other bills that this government has brought forward, including the difficulty that those unorganized workers have of balancing the power by organizing it. It really is a very, very domino effect, isn't it?

**Ms Overholt:** It is and it's so puzzling, because at the same time as you have this government introducing changes to employment standards, saying they want to do away with the wage protection plan because they don't feel that taxpayers should be paying for workers where their employers leave without adequately providing for them, they're releasing the employers from their obliga-



tion to care for workers who are injured in their workplace.

**Mr John O'Toole (Durham East):** Ms Overholt, thank you and your partners from legal aid for your presentation. Your first observation I think is right. I do believe that you or anyone else for that matter don't have the corner on compassion. Your observation's correct. We are here to listen. That's for the record and it's my point of view, and I expect it's the view of others on this panel.

You left a departing remark to suggest that there would be greater victimization. I'm not sure how that would happen, but I'm going to get down to the question —

**Ms Overholt:** Would you like me to answer that?

**Mr O'Toole:** No. I've got a question you can answer as you wish in a moment. In your opinion, Ms Overholt or Mr Atkinson, is the current legislation serving injured workers in Ontario, or is it in need of review?

**Ms Overholt:** I think when we look at the current legislation and look at the process that was engaged, there was a lot of consultation to bring about what was in place in terms of the bipartite system. There is no question that every piece of legislation needs to be reviewed and needs to be examined. If we're going to make change, we need to ask, when we look at legislation, especially this type of remedial legislation, are we going to be helpful or are we going to be hurtful?

In so many ways, when I look at this legislation, I can see ways that workers are going to be worse off. When I look at the time limitations, the work I do in my clinic, I constantly see people who do not have good English skills, who don't understand communication, who bring in documents that have been sitting in their houses for a couple of weeks because they were waiting for someone to come who could read and translate it.

When you're talking about people accessing services and engaging something like the Workers' Compensation Board, there's always room for improvement. I would be thrilled if I thought your government was really intent on improving that access and improving workers' ability to receive benefits when they're injured. But when I look at what you've put in place, I'm seriously concerned. When I look at the changes you've made to the Workers' Compensation Appeals Tribunal, you had a body there that was independent of the board, and that's ever so important.

If you parallel this Workers' Compensation Act with the changes that you're making in terms of the Social Assistance Reform Act, there are identical emphases. You're taking the appeal tribunals and robbing them of any kind of independence. You're saying that they have to follow the ministry policy, whatever it is. Why would you rob yourself of an independent voice that can sit there and say, "Maybe there's a way of doing things better"? If you were truly motivated to make things better, to make workplaces in Ontario safer and to have much more labour harmony, you would want to keep that kind of independence, you would want to keep the Occupational Disease Panel because of the quality work they do. I don't under-

stand why those are the areas that you're cutting back and making cuts on.

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**Mr Pat Hoy (Essex-Kent):** Thank you very much for being here this morning. The normal healing time, which has been stated before and we don't always get to ask a question about it, I did ask a physician what he thought about it. I suppose normal healing time would take a medical definition or opinion, but what about a legal sense? I'm curious as to how you see that phrase, "normal healing time," being implemented. Do you think it has predictability to it that can be relied on?

**Ms Overholt:** What's so difficult about this legislation is that we don't have the interpretation of what those things are going to be, what is going to be the normal healing time, how that's going to be interpreted by the board. In terms of looking at it legally to say what the alternatives are going to be, we'll have to look at what information is there in terms of board policy, what the intent of the Legislature is. We're very much concerned that with the board policy, if it's extraordinarily restrictive — if you look at the language of this legislation, there is not a lot of flexibility. A great deal is left to the discretion of the board. That makes injured workers incredibly nervous because that has not been a source of helpfulness in the past.

**Mr Hoy:** So it's possible that workers with similar injuries might be treated differently.

**Ms Overholt:** It's possible, especially when you're looking at something like chronic pain. I'm not trained medically but in our experience with clients who have had chronic pain, there is incredible diversity just from one year to the next in terms of what they're able to do. Those are the type of illnesses and diseases that we need to be very careful about when we assess their impact on the worker. I'm really concerned about a normal healing time being an artificial standard that will rob workers of benefits they deserve.

**The Chair:** Thank you very much for coming before the committee to make your presentation and contributions.

#### OCCUPATIONAL HEALTH CLINIC FOR ONTARIO WORKERS (WINDSOR)

**The Chair:** I'd like to now call upon representatives of the Occupational Health Clinic for Ontario Workers (Windsor), Jim Brophy. Good morning and welcome.

**Mr Jim Brophy:** My name is Jim Brophy. I am currently a member of the Ontario Occupational Disease Panel. I have been active in the field of occupational health for over 20 years. I am a member of the cancer committee of the Essex County District Health Council and co-chair of the cancer prevention committee. As well, I am a senior visiting research fellow and completing my PhD in public health at DeMontfort University in England.

I'm here today to ask for your reconsideration regarding the proposed legislation that would abolish the existing structure of the Occupational Disease Panel. I also wish to discuss the larger questions regarding occupational disease and how this proposed restructuring of the Workers' Compensation Act will affect both workers and the public's health.

Normally, I would applaud the committee for engaging in public consultation. Such a process is an important hallmark of our democratic society as well as an essential component of effective public policy. However, I do wonder if we are unknowingly participating in a hoax. How is it possible for the government of Ontario to radically alter one of its largest single social programs with a consultation that amounts to only 3.5 hours of public input in communities such as Windsor and London?

Windsor and Essex county is one of the manufacturing centres of Canada. Thousands of our fellow citizens work each day in environments that pose a potential risk to their safety and health. If one is going to alter the historic compact that was first initiated by a Conservative government in 1914 between workers, employers and government with regard to the right of workers to compensation for work-related injuries and diseases, then simple justice requires that our citizens be given a more serious opportunity to express their opinions than a half-day consultation.

I will tell you frankly my reason for participating today is because I believe a broad section of our community realizes the importance of an independent Occupational Disease Panel and fully supports the work of the current ODP and wishes to see it continue. I hope in some small way to give voice to their sentiments regarding the continued public health issues that the ODP has attempted to address.

Nothing could more dramatically highlight the public support that exists here for the work of the ODP than the recent Windsor Star articles regarding the panel's difficulties in securing a literature review on breast cancer and occupation. The panel had dedicated a portion of this year's budget to review what is currently known about the occupational causes of breast cancer, which is a disease that is becoming more and more prevalent among Canadian women.

When the chair of the ODP, Ms. Niki Carlan, attempted to initiate this review, she was told by Ministry of Labour officials that she would not be allowed to spend this money. It was only after the Windsor Star, members of the Liberal and NDP caucuses and Cathy Walker, national health and safety director of the Canadian Auto Workers, demanded that this decision be reversed that the Minister of Labour changed her mind. The Windsor Star wrote a supporting editorial which lauded this reversal.

This story exemplifies the current crisis in occupational health and safety. It also acts as a harbinger of what is to come if the current proposed legislation is allowed to destroy the ODP.

Why should the Occupational Disease Panel continue to exist? There are historical reasons. The ODP arose out

of the recommendations by two royal commissions: the Royal Commission on the Health and Safety of Workers in Mines, known as the Ham commission, and the Royal Commission on Matters of Health and Safety Arising from the Use of Asbestos in Ontario; and from Professor Weiler in his report, *Protecting the Worker from Disability*. Both these royal commissions and Dr. Weiler's report recommended the establishment of an agency that would later evolve into an independent Occupational Disease Panel.

These two royal commissions were both appointed in response to the demands of workers and their unions regarding occupational disease, particularly occupational cancer.

The Elliot Lake uranium miners triggered strikes and political action after government-appointed researchers established what the workers themselves had been witnessing and saying for almost a decade, that they were dying of cancer and respiratory disease caused by their exposures at work. Ministry of Labour epidemiologists found three times the expected rate of lung cancer among the uranium miners, many of whom had only a few months of exposure.

In 1991 the United Steelworkers claimed there had been at least 800 deaths from lung cancer among uranium miners in Elliot Lake since the mines opened. Approximately half of these deaths were compensated. Each month there are approximately three new cases of lung cancer among the former miners and this disease pattern will continue into the next century. All these deaths and all this suffering could have been prevented, but government negligence allowed these horrendous conditions to exist until a social explosion called a halt to such complacency.

Dr Ham's report documented these conditions and recommended that these mistakes be corrected before other workplace catastrophes could emerge.

Within a few short years the provincial government once again established another royal commission. This time it was to study the cancer epidemic among workers exposed to asbestos. It was estimated in 1978 that asbestos would cause 8,200 cancer deaths per year in the United States, rising to 9,700 by the end of the century, then dropping to about 3,000 per year until the year 2025. In Britain asbestos "now kills between 3,000 and 3,500 people every year and this death rate will increase to between 5,000 and 10,000 in the first quarter of the 21st century."

These needless, preventable deaths are the result of a conspiracy that involved employers, governments and medical professionals for over four decades. As early as 1931, executives of Johns-Manville were already aware that signs of asbestosis had appeared in over half of their Quebec textile workers. In 1948, Johns-Manville physicians X-rayed 709 workers at the Jeffery Mine and Mill in Quebec. The physicians discovered that only four workers had normal lungs, and then left without informing anyone of their findings.

This negligence continued into the 1970s when world-renowned asbestos expert Dr Irving Selikoff issued a



serious warning about the dire health consequences for workers at a Manville plant in Scarborough.

This same tragic story was uncovered in our community in the late 1970s. The Bendix Automotive plant had ignored government orders to control asbestos exposure for over a decade. In the summer of 1979 Windsor learned the consequences of this negligence when it was discovered that a 34-year-old employee, Mr Tommy Dunn, was dying of mesothelioma after working in the plant for only 10 years.

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I mention these historical experiences because it helped to shape the ideas and the concerns of royal commissions and Professor Weiler in their deliberations. They recognized that employers and government agencies such as the WCB had a vested interest in not recognizing occupational diseases, and therefore called for a mechanism like the ODP, which was both at arm's length from government and would also bring the major stakeholders together to focus on the work environment and its impact on the health of the workers.

Based on these recommendations, a Progressive Conservative government created the Industrial Disease Standards Panel — later the ODP — in 1985. This decision was based, I believe, on the sound assumption that we could not repeat the historical experience of the hardrock miners or the asbestos-exposed workers if we wished to have a decent society. It did not serve the interests of society as a whole or government or employers for occupational diseases to go unrecognized and for conditions of work to have a deleterious effect on the health of working people.

Have we corrected the problem and learned from our mistakes? Is it possible we no longer need an Occupational Disease Panel because we have learned from our historical mistakes and have improved the working conditions to the point that the workplace no longer poses a serious threat to the health of workers? Unfortunately, I think the powers that be, in a mad grab to join the global economy, have suffered from a form of collective amnesia that forgets that by prioritizing profits over all other social considerations, workers' health is one of the first things to be sacrificed.

Due to reasons of time, I won't go through the stats from Labour Canada, but there are millions of workers that Stats Canada has identified with workplace health and safety problems. Dr Grayson, the author of the report, concluded: "A substantial proportion of Canadians exposed to potential workplace hazards believed that their health had been affected.... Fully 70% of the workers exposed to poor air believed their health had been affected. Dangerous chemicals or fumes were perceived as having an effect by about half the workers exposed to them, while more than 40% of those exposed to dust or fibres or to loud noise considered them to have been harmful."

Dr Allen Kraut, in a recent article in the American Journal of Industrial Medicine entitled Estimates of the

Extent of Morbidity and Mortality Due to Occupational Diseases in Canada, estimates that between 77,900 and 112,000 new cases of occupational disease and 2,381 to 6,010 occupational disease deaths occur in Canada each year.

Dr Kraut further concluded that occupational diseases are a significant and underestimated cause of morbidity and mortality in Canada. He stated that in Ontario, "less than 50% of the individuals dying of asbestos-related malignancy, compensable under the Ontario WCB," actually receive benefits.

In a recently released article in the Archive of Internal Medicine, American researchers estimate that currently job-related injuries and illnesses are more common than most people believe, costing the United States far more than AIDS or Alzheimer's disease and at least as much as cancer and heart disease. Dr Leigh and his colleagues found that US government estimates of 9,000 non-fatal injuries per day was four times lower than the real figure. They also discovered that government figures were over two times lower than the actual number of new ailments. The researchers said that direct costs of injuries and illnesses cost \$65 billion in 1992 while indirect costs, including wages, were \$106 billion. This made for a total of \$171 billion in 1992, \$468 million a day.

A study commissioned by Macmillan Cancer Relief in Britain estimated that there will be an increase of 56% of new cancer cases by 2018. The World Health Organization has predicted that cancer cases will double around the world over the next 25 years.

In Ontario, it is well known that we have a serious cancer problem. Ministry of Health officials have told us there has been a 50% increase in the incidence of cancer in the past decade. The Ontario Cancer Treatment and Research Foundation estimates an approximately 3% to 4% increase each year. In some cancers, such as breast cancer, the rate has doubled within a generation and the latest estimates are that it will double again, affecting one in four women in Canada.

In Essex county, a study sponsored by the public health unit and the district health council found excess lung, prostate and rectal cancer among men and excess lung and colorectal cancer among women. It is projected that by 1998 the incidence of the four most prevalent types of cancer in Essex county, namely breast, lung, colorectal and prostate, will have increased by 40%.

It is acknowledged that the workplace is a contributor to this increasing cancer incidence, and yet there is not a single piece of legislation that specifically addresses the exposure of workers to carcinogens, nor is there any governmental body, other than the ODP, which specifically examines the impact of workplace carcinogens on the health of workers.

The ODP sponsored ground-breaking scientific research when it formed a partnership with the Windsor Cancer Treatment Centre and the Occupational Health Clinic for Ontario Workers (Windsor) Inc to register the occupational history of local cancer patients. Even though

the workplace is one of the important contributors to the incidence of cancer, no other cancer treatment centre in the province records any information about the work history of their patients. This lack of data hinders society's efforts to reduce the disease.

Since 1992, the ODP has looked at the issue of cancer among firefighters, hardrock miners, metal-working-exposed groups such as auto workers, and health care workers exposed to antineoplastic drugs.

In 15 epidemiological studies of firefighters, 12 found excess brain cancer. Firefighters in Toronto, for example, had a statistically significant twofold excess of brain cancer. Six other studies found excess brain cancer ranging from twice to almost five times the expected. Firefighters also bear an excessive and disproportionate cancer burden in other sites. Lymphatic and blood cancers such as leukaemia are two examples. Out of nine health studies of firefighters, a strong association was identified in six studies, ranging as high as two and a quarter times greater than the rest of the population.

Benzene is a known cause of leukaemia. After carbon monoxide, benzene is generally the second most commonly found organic constituent of fire smoke, typically present in high concentrations in the fire environment. Bulk samples performed at various fire scenes found concentrations that were two to four times Ontario's current limit. Measurements of individual samples were as high as 16 times this maximum allowable concentration. A recent study shockingly found benzene in excess of the legal limit inside the self-containing breathing apparatus of firefighters.

In addition, the ODP reported a probable connection between firefighters and cancer of the colon, bladder and kidney, as well as certain other cardiovascular diseases. The ODP report has not only been lauded and utilized by researchers and government agencies across Canada; there is also a heightened awareness about the potential risks that exist in the course of their work.

In 1993 the Canadian Auto Workers asked the ODP to examine the possible health effects of exposure to metal-working fluids. Based on these findings by the ODP, the CAW and the Big Three car makers in their last round of bargaining agreed to reduce the level of oil mist to five times below the current Ontario limit. The auto companies have now agreed to provide the union with all health studies. They have also jointly embarked on pilot projects to find substitutes for oil-based products.

Dr Peter Infante, the director of standards with the United States Occupational Safety and Health Administration, addressed the President's cancer panel about the lack of concern regarding carcinogens in the workplace. He stated, "We know the majority of substances known to cause cancer in humans and almost 100% of human lung carcinogens have been identified by studying workers overexposed to these toxic substances."

I'm sorry; I'm moving ahead because of time.

Is the ODP biased and its work faulty? I believe it is important that we acknowledge the truth and say clearly

and directly who is forcing these retrograde measures that threaten over two decades of change in the area of occupational health. In spite of the fact that all of the reports of the ODP in the last five years have had the unanimous consent of all the stakeholders, including the business representatives on the panel, in spite of the fact that our work has precipitated significant steps in the area of prevention and particularly cancer awareness and in spite of the fact that the ODP's reports are respected throughout the scientific and medical communities, the panel has faced a continuous barrage of criticism from essentially one quarter, the Ontario Mining Association and Inco.

The ODP has released three reports on cancer among hardrock miners in northern Ontario. The ODP did not engage in its own research but relied on the previous research of either the WCB, the Ministry of Labour or reports commissioned by the corporations themselves.

In the case of the update on lung cancer among nickel workers at Inco and Falconbridge in Sudbury, we relied on the work of Dr David Muir — whose curriculum vitae I've supplied the committee — an internationally renowned scientist from McMaster University. Dr Muir was hired by the mining corporations to conduct their own investigations. The ODP believed he was eminently qualified and his expertise to investigate these issues accepted by all the stakeholders.

When an updated report was formally requested of the ODP by the Workers' Compensation Board, the ODP commissioned Dr Muir to conduct a cancer morbidity study of the nickel workers. This study was recognized as the most significant and exacting look at the nickel workers yet undertaken. It unfortunately produced findings that would strengthen the contention of the miners and their union that there were significant work-related cancer cases that should be compensated. Dr Muir found a four-fold increase of cancer of the larynx, excess lung cancer and a phenomenal risk of nasal and sinus cancer.

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When the results exposed the mining industry to additional compensation costs, then the ODP was accused of biased and even faulty science. Ironically, this research was being conducted by the very person the mining industry had used previously.

The mining association had the same reaction to the ODP report on stomach cancer among gold miners. Dr Jan Muller, another renowned scientist recognized internationally for his work in epidemiology, conducted four separate investigations to determine whether there were other possible causes of the excess stomach cancer found among the gold miners. He was hired by the WCB and the federal Atomic Energy Control Board. Each time he determined that exposures in the workplace were the cause of this excess.

Relying on Dr Muller's findings, as well as all the other epidemiological evidence, the ODP issued a unanimous report recognizing the probable connection between stomach cancer and the work environment of gold miners. This brought an immediate campaign by the Ontario



Mining Association to suppress the findings and discredit the ODP. In November 1996, Mr Pat Reid, president of the Ontario Mining Association, wrote to the chair of our panel insisting that the ODP immediately refrain from making any presentations about ODP findings regarding stomach cancer among gold miners.

I think Dr Muller summarized it best when he wrote to the panel and said:

"I was deeply disturbed by your statement that the government has ordered that the Occupational Disease Panel cease operation as of December 31, 1996. Is this a way to create a good business environment, or do we want to transform the province into a developing country or province?"

That seems to me to be the choice of this committee. Will you follow the dictates of one powerful employer group to protect their narrow economic interests at the expense of hundreds of thousands of workers and their communities? Will you allow occupational disease to be covered up until the social and human costs can no longer be borne? A head-in-the-sand approach will not be able to conceal the inevitable human costs of unbridled toxic exposures in the workplace.

I ask you to reconsider your decision and reinstate an independent Occupational Disease Panel in the act.

**The Chair:** Mr Brophy, thank you very much for your thorough presentation to the committee this morning. We appreciate your taking the time.

#### WINDSOR AND DISTRICT CHAMBER OF COMMERCE

**The Chair:** I now call upon representatives from the Windsor and District Chamber of Commerce. Good morning. Welcome to the committee.

**Ms Loretta Stoyka:** My name is Loretta Stoyka. I'm a barrister and solicitor in the city of Windsor. My practice is restricted to acting for employers in all matters pertaining to workers' compensation. I'm in my 10th year of practice. I'm the past chair of the chamber. Along with my colleague David Law from Toronto, who is also a barrister and solicitor and former employee of the Workers' Compensation Board and a hearings officer for several years with the Workers' Compensation Board and author of several papers and participant in the Bill 162 policy etc, I'm here today to provide you with an overview of the local chamber's concerns. My colleague Mr Law will give you that overview, and then I choose to speak on one specific issue. Then we hope very much to have time for questions.

**Mr David Law:** My past experience at the Workers' Compensation Board covered essentially two areas: trying to implement the last major legislative change, Bill 162 in 1990-91 — I was the implementation coordinator for that exercise; subsequent to that, I had five years of hearing appeal cases, primarily in re-employment, rehabilitation and also in claims. I left the board about a year ago and

now represent employers and of course am associated with Ms Stoyka.

I offer that experience simply to give you some idea of where I get some of the things we have to say with respect to the Workers' Compensation Board's approach to these issues and the key concerns we'd like to leave with you this morning.

First of all, with respect to the act itself, you have copies of our papers. I would encourage the committee members to keep what I consider to be three basic questions in mind with respect to whether this act works or doesn't work. They are very elementary things. The first simply is whether it ensures that people are getting the compensation they're entitled to in a just and speedy fashion for the work-related injuries and illnesses they suffer, and just as clearly, whether it ensures they're not being compensated for things not attributable to their work. In my view, that's an absolutely critical problem with the existing system: the overinclusion of non-compensable items and extended disabilities within the workers' compensation insurance system. The act, as it stands, takes some measures to move forward on that. I think we could do more.

The second question I would encourage you to ask with respect to whether the act is working is simply, does it ensure fairness to employers and among employers with respect to cost allocation and the burden of administration and benefit provision? I'll talk about that a little more.

Third, and this is old-hat stuff when it comes to workers' comp, does it do anything at all to make the system simpler or more efficient, to streamline it, to make it easier for people to deal with the board?

What are the core issues in the current workers' compensation system that this act ought to address? In our view, essentially, the first and critical one that it begins to touch on but may not really resolve is that of overinclusion. This doesn't mean so much that more claims come in that are actually real. There is a certain degree of fraud. But the real issue is that claims go on forever, often far beyond the time in which an injury would normally be expected to heal. There was some discussion of that this morning in the committee.

All we're encouraging is that the system begin to apply its attention to the question of whether other factors in a person's life are extending their disability beyond that which is reasonably attributable to their work. In my experience, and it's considerable, very little real attention has been paid to this with respect to policy at the board and certainly not a whole lot of it with respect to application of policy.

Second, there's a trend now towards moving accountability and administration from the board itself on to the parties. This is viewed by a lot of people as a very positive thing, and it's tied in to some extent with this idea of mediation of disputes. You'll see that theme within the new act and within past practices at WCB in appeals, trying to get the employers and workers to be more involved. Everybody thinks this is a wonderful thing. It is in theory, but I note that it does shift a burden from the sys-

tem itself on to the parties. With respect to employers in particular, the new act really moves a lot of responsibilities from the act with respect to voc rehab; it appears to, anyway, on paper, shifting it over to employers to exercise a voc rehab function.

That really creates problems for two parties, I think, first of all, employers, who are being asked to take on what essentially is return-to-work formation and labour market re-entry plans, if you will, for the worker to come back. It has to be done within a certain time frame, with penalties hanging out there; we don't yet know exactly what they're going to look like. I'm also sure my counterparts on the labour movement side of this would not be so thrilled to have employers managing voc rehab either.

All we're asking you to do is to realize that what this act essentially is doing is privatizing vocational rehabilitation from a board-administered function on to employers. That's what it appears to do. If that's what you want to achieve, fine, but be aware of what it is, because employers will be bearing much greater costs on an individual basis on their own budgets as opposed to the system bearing these costs if the act is interpreted the way it reads.

That said, this is not an endorsement of the exiting voc rehab process. I have a lot of experience with it. I can't say that it serves workers particularly well, and it certainly hasn't served employers particularly well. Our paper details a rather different approach to it, which I will leave for you to consider. I'm not going to take up all the time this morning talking about the other approaches that you might follow up or recommend.

Another issue — I think this is key, and if you can do anything about this, I'd strongly encourage you to do something about it — is that within the Workers' Compensation Board itself there is a culture of arbitrariness, a culture of exclusion with respect to making decisions. The experience I've had in this area, and it's considerable, is that the stakeholders tend to get managed, to get manoeuvred. They get a chance to speak, but those words sort of drop down a well. They all are supposed to feel better, but nothing really changes.

On a day-to-day basis, that's just irritating. It's irritating for all parties. But now it's really a critical problem, because what we have on our hands is a big fat document that's a whole new act. It's being administered and implemented entirely from within the walls of the Workers' Compensation Board, as far as we know. With no disrespect to the efforts they make at outreach or to listen to the stakeholders involved, we strongly encourage the committee to move forward and encourage the board to create real, concrete measures to enable the stakeholders to have real input, because what we've had historically is essentially a process of taking submissions and then putting them somewhere on a shelf. I know this because I put them on a few shelves myself in my time.

I know what happened in Bill 162 was a very elaborate process of implementation consulting that essentially resulted in something which made almost nobody happy.

I'm asking you to try to encourage the board to be more inclusive and really listen to what people are saying.

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I asked three questions at the beginning of this about workers' entitlement to things for work-related and not for non-work-related things, for ensuring fairness among and to employers, and for speedy adjudication. How does Bill 99 achieve that? There's a list of ways that it works. That's on page 4 of the document I've given you. I'll leave that with you because I want to get to a couple of the problem issues and then I'll let my colleague speak to you.

In short, the problem areas that we view with Bill 99 provisions, and these are just a few; Ms Stoyka has another one she wishes to discuss in more detail:

The return-to-work procedure, as I've said, essentially is another offloading of responsibilities from a government agency, in this case, on to employers of all sizes. We don't know what the rules will be. We don't know what the penalties will be. Right now we're largely in the dark as to what will ultimately pan out with respect to this, and it's going to be a considerable cost to employers. I think the committee ought to understand that.

The party that wins with these return-to-work provisions in terms of the employers having to do all this is the board, because it presumably reduces their administrative costs or it may give them a pretext to eliminate their voc rehab personnel if that's what they're after, if that's the agenda. Understand that where that work will shift to is the parties, and understand that of course they'll pay for it. If that's what you want to achieve, fine, I suppose. We're not so thrilled with it. I leave that with you to consider.

More specific, some smaller provisions I would ask you to reconsider in your review of the legislation include the elimination of the second non-economic loss exam. All parties use the second NEL exam essentially as a quality check. If you get something bizarre or ridiculous on the first go, you tend to try to get a second exam. It's a very good process. It allows for a certain degree of quality checking. It eliminates to a certain degree the arbitrariness of the NEL. I don't really know what is served by eliminating it. The NEL provisions are so ridiculously convoluted as it is, chopping the one thing out of it that really seems to make sense seems like the wrong thing to do.

Thirdly, Ms Stoyka is going to speak to you about functional abilities information. I would offer you a suggestion that may be perhaps more extreme, if you will, more radical in some respects, or at least a blanket provision: Eliminate the distinction between functional abilities information and relevant medical, and simply say that the worker has to provide relevant medical. I fear what's going to happen when we get into what's functional abilities and what's medical and the endless debate we're going to go about with that. Ms Stoyka has more detailed comments on that concern in her own remarks.

Next, a small thing perhaps, but in my view something that you ought to consider talking about is the name change. What does it achieve? It seems to produce confusion. It will cost everybody lots of money and time. And it



doesn't really do anything good. I suppose it projects a change in stance. That's the idea of it. It is cosmetic in that respect. We understand that, but it's enormously costly for everybody, all the stakeholders and the board itself, and it doesn't really produce much value. I recognize this is a long shot in terms of saying that the thing should be changed, but I would encourage it because it doesn't seem to produce much of value to the system, and that, after all, is what we're supposed to be doing here.

Finally, I repeat, please do something if you can, either within the statute or in some other form, to encourage the Workers' Compensation Board to open up its process of consultation and to ensure that stakeholders — employers and labour alike — have a real voice and are heard. This is an enormous new act. It's very complicated and it's being implemented right now somewhere, we don't know where, and we don't know what it's going to come out like. That's a real concern, a real problem for everybody involved, all the stakeholders. We would ask you, if you could, to take measures to prevent that from getting out of hand, which is what I suspect will happen based on my own experience.

Finally, in closing, there's a list of provisions in Bill 99 on page 4 of my document which we support. Ms Stoyka will mention some of them. We simply want to remind the committee that this system has been in place now for a long time with the reputed objective of offering injured workers speedy and humane compensation for the things that occur to them arising out of work. "Speedy and humane justice" was the term once coined. It is not just for the system to support costs which are not work-related. It is not just for employers to support costs which are not attributable to the injuries in their workplace. It is not just to move more costs on to employers in the form of administrative offloading from the WCB.

Thank you very much for your time. I'll turn this over to my colleague.

**Ms Stoyka:** I want specifically to deal with the benefits and entitlement. The chamber members found the current benefit level of 90% of net average earnings generous by Canadian standards and have supported a much lower benefit level. Many chamber members still believe that 85% of net remains an incentive to remain off work. The chamber believes the 85% level may be suitable only if the return-to-work provisions of Bill 99 — worker cooperation, health practitioner participation in providing functional abilities information, 14-day appeals for information to the board, mandatory consent to release functional abilities information etc — are properly and effectively administered by the board.

I want to speak next to claims reporting. In keeping with the employer's principle of efficient administration and simplification of the workers' compensation system and a more harmonious relationship between the stakeholders, I'm addressing the following concerns as they pertain to claims reporting.

The reporting of the claim under Bill 99 includes the release and issuing of functional abilities information for

return to work. The chamber recognizes that this is pivotal to return-to-work planning and accommodation of the worker. The chamber is concerned that Bill 99 fails to require prompt information being provided on the part of health care practitioners as the persons responsible for providing functional abilities information. The chamber believes that Bill 99 and board policy must address several issues to do with functional abilities, including timeliness and penalties for delaying authorizing or releasing functional abilities information.

My position on the present form for functional ability information: In its present state, it will lead to confusion with health care professionals and employers. The health professional is advised on this form to provide only physical precautions and told not to provide diagnosis. Then the physician is warned that this form does not replace the clinical report and requirements of the WCB.

First I'll address the issues of diagnosis. We're dealing with a workplace injury arising out of and in the course of employment. The employer financially supports this system completely. It is our position that the employer has a right to know all information pertaining to workplace injuries, including diagnosis. The average employer does a complete investigation of a workplace injury immediately after notification. There are supervisory reports, witness statements and a worker's statement. The employer then provides this information to the WCB in the form 7. At that point, the employer has a reasonable knowledge of the type of injury sustained by the worker.

Given all of the above, why should the employer be kept in the dark about the diagnosis? How is the diagnosis of a workplace injury confidential? Is this committee aware that well over 90% of the medical notes received from physicians treating workplace injuries contain diagnoses? Is this committee aware that the employer is provided with a diagnosis on all sickness and accident medical forms? It is a mystery to the employer as to why the diagnosis must now be hidden.

Further to that, I refer you to the Report of the Commission of Inquiry into the Confidentiality of Health Information, 1980, carried out in this province by the Honourable Mr Justice Horace Krever. In dealing with the issue of medical certificates pertaining to return to work, Mr Justice Krever quoted from the Gilbarco and Canadian Union case, and I have cited that on page 3 of my document. He quotes:

"...employers and trade unions would be well advised, for their own protection and also for the protection of employees, to make representations to the medical profession with a view to standardizing the form of certificates issued by doctors and to impress upon doctors the need to recognize their professional obligation to issue accurate and informative certificates. Two types of medical certificates are commonly required. One is required to justify the reasons for an absence from work, the other is required to certify the employee's fitness to return to work following. It ought not to be difficult to prepare standard forms for use by all doctors."

As a result of that inquiry, Mr Justice Krever made a formal recommendation as follows:

"That the Ministry of Labour in consultation with the Ministry of Health prepare a form that will be sufficient to: (a) justify an employee's absence," ie, diagnosis, "and (b) certify an employee's fitness to return to work."

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These recommendations, ladies and gentlemen, were made in 1981. I ask this committee, are we going forward into the future or back in time?

It is the position of the employer that the average worker who is injured will not object to the employer knowing the diagnosis of a workplace injury. Further, it is our position that this is not confidential information, but time does not allow the argument of that issue today.

Another issue of concern pertaining to the same form is the requirement by the Workers' Compensation Board to make it the responsibility of the employer to obtain the signed consent of the worker before sending the health professional the functional abilities form. Again I refer you to the sickness and accident benefit forms, which have an area included on the actual form for the consent of the worker to release the information to the employer.

Going back to our first premise, in keeping with the efficient administration of this issue, it is the position of the employer that common sense — no pun intended — dictates that it would facilitate the whole process if the employer provided the form to the worker before they attended with the health professional. While in attendance with the health professional, the worker could sign his consent on the form before the doctor provides his input. This ensures that the doctor has confidence in the worker's consent and takes the onus off the employer which properly rests with the workers' compensation system.

**The Chair:** Excuse me. Just to let you know you have a minute left.

**Ms Stoyka:** Last, the health professional must be made to understand that this form is mandatory and must be provided in a timely fashion. The employer would expect that the workers' compensation system has liaised with the College of Physicians and Surgeons to provide education for a smooth transition for what is considered a new procedure.

I'm sorry we haven't time for questions. Thank you very much.

**The Chair:** Thank you very much for your presentation this morning. As with the other presentations, I know the members of the committee will read it through.

**Ms Stoyka:** We appreciate it.

**Mr Hastings:** Madam Chair, I have a request for information. Would it be possible to have Mr Law, who seems to have a tremendous amount of experience and involvement with the WCB, see if in conjunction with the Windsor Chamber of Commerce he could provide us with a more specified policymaking approach to get through the arbitrariness which you have highlighted regarding the existing WCB process and structure?

**Mr Law:** I would be happy to consult the chamber on that and produce a document which I could forward to the clerk's office of your committee. I can do that in short order.

**The Chair:** Thank you very much. I'm sure that will be helpful to all members of the committee.

#### LABOURERS' INTERNATIONAL UNION, LOCAL 625

**The Chair:** I'd like to now call upon representatives from the Labourers' International Union, Local 625. Welcome.

**Mr Wally Dunn:** My name is Wally Dunn, business manager of the Labourers' International Union of North America, Local 625. I represent labourers in the Windsor area, Essex and Kent counties.

Before I begin, I would like to apologize to the panel. I do not have my presentation to hand out to you because I received my confirmation just before lunch Friday past, when I was on my way out of my office, out of town. This lack of notification seems to be consistent with the amount of time the construction industry is being given to have our input involved in this Bill 99.

The Labourers, who number approximately 26,000 strong in Ontario, are vehemently opposed to Bill 99, with its proposals to cut benefits by 5%; the elimination of cost-of-living protection; giving employers control over return to work; making chronic stress and chronic pain claims impossible; mandating which doctors injured workers must see; giving the employers access to confidential medical information; and last, reducing the right of appeal.

The Labourers' major concern is the absence of a definition of "construction" in this new act. As I stated earlier, there are approximately 26,000 Labourers in this province, many thousands more who belong to other building trades unions, and thousands of non-union construction workers, whom the Harris government fails to acknowledge in this piece of vicious legislation.

The construction industry is entirely different from the industrial sector. We have no seniority protection. Layoffs are an ongoing part of our industry due to short-term projects. It is not often that we have major projects that are of a duration of a year or more. The majority of our projects are less than a year, some only a few months, some a few weeks. Due to this type of work, workers often move from one area of the province to another, following the industry as one part of the province is in more of an economic upswing than other areas.

Now if an injury occurs, the WCB claims process starts immediately after the claimant's doctor determines that an injury is work-related. Under this new legislation, the workers are forced to ask their employer for a form in order to make a WCB claim. There is no doubt in my mind that workers will be intimidated not to file these claims or to ask for these forms.

In the construction industry, a great many companies are not from the area where the workers live, thereby



making it more difficult for injured workers to have access to these forms. Further delays will result due to these logistics involved. If an injury occurs under this new legislation, will the injured worker be allowed to see his family physician? Will they deal with the board in their home town or in the area of the province where the company originates? Will the injured workers have to travel long distances to see doctors the companies wish them to see? If so, who will cover these added expenses? These are some of the questions that will surely arise — more stress added to an already stressful situation.

In regard to return to work, who will determine the criteria regarding this issue? There is no such thing as light duty in the construction industry. Now rehabilitation becomes even more important to get these workers back in a position to return to their jobs, jobs that in many cases they have had for many years. Due to the elimination of the Workplace Health and Safety Agency, lack of funding for the workers' health and safety centres and the elimination of the Occupational Disease Panel, who is going to carry on with the gains made within these agencies? Surely it will not be the private sector, because their only concern is the bottom line for the companies. Rehabilitation will not be a priority in this climate of corporate profit at the expense of workers.

There are other issues that have to be raised at this hearing pertaining to the construction industry, but time constraints prohibit raising all these issues.

In closing, I would urge any individual who is considering supporting this legislation to take a long, hard look at the consequences that will occur under this bill. There will be an increase in workers' injuries and/or deaths in the construction industry, and the people involved in passing this legislation will have to accept the responsibility for these tragedies.

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**Mr Jack Carroll (Chatham-Kent):** Just a couple of short questions. Is the emphasis properly placed on return to work? Is that a good place to put the emphasis?

**Mr Dunn:** As I said in my presentation, there is no such thing as light duty in the construction industry. We are not in an industrial setting where we can move somebody here to maybe run a machine that's not as stressful on a back.

This government has to realize that the major tool for construction workers is their body, the whole body. If something happens, no company is going to take a worker back to sit at a desk all day and do nothing. That's just not there. What we need with these injuries is rehabilitation, to get the individual in a position where he can get back to work in our industry, because probably the lightest thing we would lift all day is 30 to 35 pounds. In most return-to-work instances you can't lift more than five pounds.

**Mr Carroll:** We should all be interested in helping that injured worker somehow get back to something because that's best. We've heard from many people who talk about the frustration of not being able to work, what an impact it has on their family. So to put the emphasis on the

return-to-work part of this is the right direction. You don't agree with the way we're doing it, but do you think that's the right place to put the emphasis?

**Mr Dunn:** Yes, I believe in getting workers back to work, making them more productive, giving them pride in what they're doing.

**Mr Carroll:** Who is in the best position to make that happen? Is it the government? Is it the Workers' Compensation Board in Toronto or is it the worker and the employer?

**Mr Dunn:** I think it's the worker and the people who represent the workers. Obviously, as I said before, the construction industry has not been consulted here. I think the construction industry and the workers involved in the construction industry would be the people to have input into this bill concerning our concerns of return-to-work and how that would be best suited to the injured workers.

The government obviously does not understand the construction industry because there's nothing in the bill really defining "construction."

**Mr Maves:** I can just quickly address that. Subsection 40(3) under "Return to Work," for construction:

"Employers engaged primarily in construction and workers who perform construction work shall cooperate in a worker's early and safe return to work and shall do so in accordance with such requirements as may be prescribed."

We're having COCA and the provincial trades councils right now working together with us to help us come up with something a little different, a little more tailor-made to return-to-work programs in the construction industry. I just wanted to let you know of that.

**Mr Dunn:** Yes, but the time frame, the way we're going, there doesn't seem to be enough time to get all this information and input it to the government, the way this legislation seems to be ramrodded through. It takes time to address all our concerns. I understand that the different building trades are involved in this.

**Mr Maves:** That regulation, though, can be worked on now and even after the bill is done. There is time for that to occur.

**Mr Jerry J. Ouellette (Oshawa):** In Sudbury we heard that in the construction industry an individual regularly would take a day off to go to the doctor, see the doctor the next day and then come back and they wouldn't have the job available for him. Is that something you're finding fairly regularly down here or is this just an isolated area?

**Mr Dunn:** If one of our employees gets injured on the job — just to take an example, if we're breaking concrete and it's a back or a shoulder injury — naturally they cannot return to that job. If the doctor gives them, say, two weeks off, the employer will need another body to replace that individual who is off. Like you say, that's what happens and they're on the list. That job could only last maybe a week or two weeks, then that individual contractor is no longer in the area and is gone. Yes, that's what is happening. Workers are being replaced after an injury.

**Mr Patten:** Thank you for your presentation. The consultations that presumably are going on that the government talks about at the moment don't involve your union, then. They're not part of that?

**Mr Dunn:** No. We are not affiliated with the building trades right now.

**Mr Patten:** Are there union workers in the construction industry who are?

**Mr Dunn:** Yes.

**Mr Patten:** As Mr Ouellette said, when we were in the north, the presentations that were made there communicated quite vividly the difficulty of return-to-work, as you've identified. You said: "Look, it's just not workable. In our areas where people have to follow where the jobs are, they may be of short duration," and that job has to be replaced immediately because of the timelines etc. What would you recommend under that circumstance?

Then you also said that the benefits were less, of course, which they are. What would compensate for an unrealistic return-to-work arrangement in many of these situations?

**Mr Dunn:** To return to work, where do we put them back into work for that original company, number one? Do you know what I mean? Before any other company would take them, it would have to be assured that they're physically fit and able to go back to work.

You're saying to release information to employers. What are you going to do if he comes back in and you want to hire him, instead of the other employer? What happens is that he's got this medical record out there — "He's got a bad back. I don't want to touch him, I don't want anything to do with him." This is an issue we're going to have to come to some kind of consensus on: What is the best way to handle this in our industry to get these people back to work? With this releasing of medical forms it's just going to be a nightmare for the people in our industry. These people will be intimidated to go back to work, there's no doubt in my mind.

I really don't know. Even in our own organization, just because we're not affiliated with the building trades, we're still a construction industry as a whole in regard to compensation and injured workers. We're still working together on that issue.

**Mr Patten:** It seems to me there are two areas. One is that there's adequate compensation in the meantime and any emphasis has to be on occupational rehabilitation, vocational training or whatever it is. As you say, it's like an athlete. If an athlete is injured and can't run any more, then that person has to consider areas that may not be his to compete and maybe in another sector completely.

**Mr Dunn:** Like I said, right now with labour involved — they've started their soft tissue clinics — if we're going to take that away with this new bill and put it in the hands of the private sector that has no knowledge of our industry, this is what concerns me personally. I think the construction industry should be looking after its own workers and coming up with a system that could best benefit them. Not all runners can't run again; once they're

rehabilitated, they're back on the track and winning again. That's what we'd like to see our injured workers go back to: the jobs they know and the trades they've been involved in most of their lives.

**Mr Patten:** If they can. That's right.

**Mrs Boyd:** Thank you very much for coming and talking to us about this problem. I think it is a very big one. I'd like you to talk a bit more about this release of medical information. We've had suggestions from the chamber of commerce, for example, that it should be an even greater release of medical information. Can you talk, from your experience in dealing with this sort of thing, about why your workers would be concerned with this release of information and why a lack of privacy you think would impact on their ability to work again?

**Mr Dunn:** What concerns me is that in the construction industry, as you know, we're highly ethnic. There are a lot of workers who are not well versed in the English language. Hell, I'm not even that well versed in it. I can't keep up. These people now are going to have to go to the company, number one, to get a form to file for comp. Then they've got to go and get a release form from their doctor about the medical.

What would happen if, say, something happened to the individual years ago and now he has hurt his back. Something fell on him on one of the construction sites. This information that would be released would say he's already got an injury from before, which probably had no bearing on this, and now this is going to come out and say: "You've had this injury before, so it's not really this piece of cement that fell on your back there last week. This stems from the injury you had before." These individuals will not understand. In order to avoid this they'll just say, "Okay, I'll go back to work," and they will not be ready to go back to work. I think it will add more injury to the injury they've already incurred.

**Mrs Boyd:** You talked about the employer very often being at a distance from the job and normally the administration would be done far from the site. This whole issue is really very urgent in your business — it is in others too — where the personnel function, the human resource function, might be hundreds of miles away and the issue of even trying to get the whole thing started becomes quite complex. Then, as you say, the short term of the jobs makes that even more complex, because what if the injury happens in the last week of the job and they haven't got the form by the time the job is over? They're no longer the employee. Can you see that kind of complication just being magnified?

1200

**Mr Dunn:** I'm seeing it right now. As everybody knows, we have the casino project here. There are numerous subcontractors on that job who could be here for a week, a few days, a month. Then, when we have an injury, to try to get this paperwork and we call their office, the individual in charge is on vacation — "Yes, the form has been sent." We've gone through one now and it's been four or five weeks. Finally we had to find out where the



individual was on vacation and call him. He said the file should have been sent out. This individual was there for at least five to six weeks doing his job, went to his doctor, went to the compensation board and now the forms weren't in for the company.

When these workers have to go and get these claims forms from the employer, surely they will be intimidated. As we all know, no employer wants to have a lost-time injury. We're seeing it now and I think it's just going to get worse.

**Mrs Boyd:** You're saying even the introduction of this bill has given permission to employers to be much less active on behalf of their employees?

**Mr Dunn:** Precisely.

**Mrs Boyd:** I think we've been hearing that a lot. One last question on the whole issue of previous injury: We've heard the emphasis from the employer advocates and the chamber of commerce on this issue of defining the injury as having occurred at that particular place and not anything that was previous, but most of your people would have had along the way a number of injuries that would not necessarily have any impact on the injury they had received at this particular site of work. This is a real concern for you because of the multiple employers. It sounds very good to say we'd assigned the cost to the employer who was responsible, but when you have multiple employers the way you do in your work, it would be very hard to assign and distribute the cost of a final injury that prevented somebody from working.

**Mr Dunn:** That's true. We can have an employee, a worker, work for five, six different companies in one year. The paperwork will be a nightmare.

**Mrs Boyd:** Yes, particularly because some of these injuries take a while to really show themselves to be serious injuries. Some of the knee strains, for example, or a shoulder strain can take two or three weeks to show that it really is a very work-limiting injury.

**Mr Dunn:** We found mostly shoulder strains or knee strains, especially on our sites where you're up and down and there's always stuff in the way. A construction site changes. It's like the water, it's like the ocean; it's never the same. You can go one minute and a minute later it's entirely different. But if these workers, the ones who go off, stay off for the two weeks, get it fixed up, looked after and then come back, that injury is no longer there to hamper them any more. But if they start going back before they're ready, what's going to happen then? They're going to aggravate it even more and have more lost time. That's something nobody wants to see.

**The Chair:** Thank you very much. We appreciate your taking the time to come before the committee with your perspective on this issue.

#### GREATER WINDSOR HOME BUILDERS' ASSOCIATION

**The Chair:** I'd like to now call the representative from the Greater Windsor Home Builders' Association, please.

Hello, welcome to the committee. You have 20 minutes in which to make your presentation.

**Mr Albert Schepers:** I don't think we'll take all of that time. You probably heard the OHBA presentation in the past, so I won't try and restate a lot of that but perhaps give you a perspective of what's happening in Windsor and draw on what the province and the statistics have as well.

I'm the vice-president of the Greater Windsor Home Builders' Association. We have our own health and safety rep — unfortunately, he can't be here today — who sits on the committees in the province with the OHBA dealing with workplace health and safety.

Our organization in Windsor, the Greater Windsor Home Builders' Association, constitutes 133 member companies, builders, renovators, professionals and the like. Throughout Ontario there are 3,400 member companies with 34 locals, us being one of them. We make up about 80% of the new housing in the province. That's what we are responsible for.

In the last few years, our industry has made great strides in improving its safety performance. The Construction Safety Association of Ontario reported at its spring annual meeting that despite increases in fatalities, a record low in lost-time injury frequency was established in 1996. In fact, the LTI frequency has been reduced 11 years in a row. I think in Windsor you'll find that the statistics are comparable to that of the province. Unfortunately, our industry is saddled with much higher assessment rates than all other provinces except Quebec. In fact the home building rate group witnesses a 22% annual increase in its standard assessment rate for 1997 to \$9.56 per \$100. The median across Canada is \$5.77 per \$100.

There are a number of reasons for this anomaly, and I think that's probably not atypical in the province. Some of that is the compensation rates. Pre-injury earnings: Sometimes they make as much as 90% of their rates. We believe that the proposal to reduce benefit levels should be modified somewhat. For short-term disablements, we believe 80% of the net average earnings would be fair and appropriate as a way to reduce duration and cost of claims. Long-term disablements should be compensated at 85%, as Bill 99 already proposes.

There are some things here that I'm not familiar with so I'm not going to go into them: Future economic loss or non-economic loss, I think you've probably heard that before.

Return to work: When construction activity was at depressed levels during the 1990s, there was less opportunity for gainful employment, so workers remained on compensation. That doesn't mean they weren't able to go back to work, but there may not have been work for them to go back to, whether it was a union environment or an open shop. This obviously increased the overall system costs and resulted in injured workers being on compensation longer than they should have been.

"OHBA has been advocating the implementation of a three-day waiting period in Ontario for a number of years.

We told the Royal Commission on Workers' Compensation that this approach should be investigated:

"There needs to be more time to assess moderate injuries and arrange modified work in consultation with the medical practitioner before the case becomes a lost-time injury and the experience rating incentive is lost."

That was a presentation made to the royal commission on March 23, 1995, by the OHBA.

We understand the Ministry of Labour has rejected the notion of a three-day waiting period for three reasons: We will cite the commitments made to the minister at the ECWC conference on June 19, 1997, and then provide what we believe are logistical answers and/or solutions.

You probably already have these questions and answers. I can go through them. I won't at this time. If there are any questions on them, we can look at that.

The financial incentives or penalties have proven to be useful methods to influence site safety through the internal responsibility system. I think that's very true in our industry. I see that from the outside because I'm a consultant working for the building industry and I know that irrespective of the need for owners to reduce their costs, keep their costs down, and perhaps give the appearance that they ignore safety requirements, it is a part of their doing business. In fact, a lot of our members realize that having a safe site and working with their people mean they actually get better production out of their people. It costs them less in the long run.

In construction, a separate experience rating program was created and this has proven to be an effective way to encourage accident prevention. In fact, the CSAO confirmed in a 1994 annual report that CAD-7 has played a major role in reducing Ontario's lost-time injury rate. CAD-7 has been so successful that there has been a slight off-balance compared to the board's other experience rating program, NEER, because the board has underestimated our industry's ability to reduce its rate of lost-time injuries. I think that goes back to having a safe site means that people can work more effectively.

1210

What is required is a way to make the rebate potential more meaningful for small construction firms. We understand that the board of directors of the WCB will be meeting — this was August 13 — in Ottawa to discuss small employer experience rating. These discussions are most welcome, but unfortunately there has been no consultation with the construction industry as to how to make the program work effectively.

Fraud: OHBA fully supports the steps that have been taken by the board to stem fraud, whether it emanates from employers, workers, physicians or even board staff. There's been too much abuse of the Workers' Compensation Board system for many years and a clear signal must be sent that fraud will be punished. In the long run, this will enhance overall system health and will allow the board to assist those injured workers who truly need compensation. The new name for the board, WSIB, may not

roll off the tongue as easily as WCB but it is symbolic of a fresh start for this institution.

To conclude, we support Bill 99 with the modifications we have suggested. We urge the committee to help expedite this reform process so that the changes can be effected as of January 1, 1998.

With respect to fraud, I'm familiar with several cases where people have been injured doing their own thing in their own homes and then they come into work and claim they've got injuries as a result of being in the workplace. I don't think it happens all that often, but those are examples of the types of fraud that can go on.

That's our presentation. If there are any questions, I'd be pleased to try and answer them.

**Mr Hoy:** Good afternoon and thank you for being here today. You talked a bit about assessment rates in your presentation. Just prior to your presentation, Mr Law was talking about rehab being shifted over to the employer and that this would create an additional cost for employers. So here we have, from your point of view, assessment rates that are high and now this additional cost being put on to employers that involves rehabilitation. What's your feeling on those two equations?

**Mr Schepers:** That's a good question. Unfortunately, I'm probably not able to answer it completely. I will say that with respect to rates, what I was referring to was that we had significant increases in the rate, but there was not justification if you look at the accident ratings we've had. Should rehab be borne by the employer? That I can't address. Obviously, it'll increase cost, but if we're paying the workers' compensation, I don't know where the view would be. I think what we're looking at is that the cost becomes very high, and can we justify that cost? In some respects I don't think we can, particularly in an industry that tends to police itself. There are small businesses, a lot of them are five or six people working in a firm, and when these costs come into place they affect them. A lot of them are family businesses, fathers and sons with their wives working in the office, and it's in their interest, obviously, not to have the injuries. With the larger businesses I can't answer that question, will it affect them? Obviously, anything that increases costs is borne ultimately in the cost of construction and goes down to society anyway.

**Mr Hoy:** I don't believe that the employers of Ontario are looking for more costs of doing business at the current time. It would seem to me that if they are going to incur more cost as employers in the rehab area, they may decide just how well a job they would do in that regard, or they will say, "Our premiums are too high because we have this additional cost being brought about by Bill 99." I can envision that coming down the road some day as well.

**Mr Schepers:** I agree. I think if costs go up, they will reassess that, and if they're going to pay for the rehab and they're going to pay the other side, they're going to say, "Hey, we're paying twice." I think we need to be reasonable and fair in the entire system.

**Mr Christopherson:** Thank you, Mr Schepers, for your presentation. I'd like to ask you a couple of questions



in the context of the historical compromise of 1914 that created WCB as we know it now. As you are aware, the compromise was that employees would give up the right to sue their employer in exchange for a no-fault system where employers paid the premiums into a pool of money that would give them their wages and benefits when they're hurt on the job through no fault of their own. That was the agreement.

You've made the suggestion that if there's a short-term - I tried to write it down but I may not have it verbatim - injury, you thought that reducing further, from 90% to 85%, from 85% to 80%, would be more appropriate because that would reduce the duration of the claim. Can you tell me how that makes the injury go away more quickly?

**Mr Schepers:** I don't think it'll make the injury go away quicker, but if it's a short-term injury, there may be more incentive for persons, once they have been rehabilitated, to find work. I can't say that I know all the facts around workers' comp and how it was originally brought about and even how they arrived at the 80%, whether 80% is the right number or 82% is the right number. I think what they're looking at is, "We've got to find a way to reduce costs and give incentive to those people who can go back to work. If we paid everybody to stay home, I'm sure they would stay home. If there's a drive and there's a need to go out and work, they will. I'm not suggesting that we want injured workers back in the workplace, but we want those people who can work back in the workplace. We need to give them some incentive to do that."

**Mr Christopherson:** But you can appreciate that their incentive is to get well. Most people - I don't assume that because you're in business, you're a crook, and I'm sure that you don't think that just because a worker works for a living, he's predisposed to fraud. Yet this sounds very much to me like you're penalizing someone. I mentioned the historical compromise to show that the original concept was if a worker is hurt on the job. If the officer who has to follow us around because the Tories are terrified out of their minds of all those who are carrying signs were shot on the job in the line of duty, the concept is that there ought not to be a penalty for that, that his wages and benefits ought to continue until he's well enough to go to work. What you would be doing to that police officer is saying to him, "You're only going to get 80%, and that's to make sure your money dries up quicker so you'll get back to work as fast as you can." Most of us would assume that officer wants to return to work because he wants to get better.

When you talk about that, I would tie that to, "Oh, I'm going to run out of time." It's the same thing with the three-day waiting period. It's penalizing workers and it's seen as if you're disciplining someone who has already been victimized because they've been hurt on the job, and that's the unfairness. The system, by the way, is there to serve injured workers first and foremost. There needs to be fairness for employers but it's not designed to be cheap for employers; it's designed to be efficient and provide

benefits to workers who are injured on the job. That has to be the priority.

A lot of people are angry here and in other communities because they're seeing what they get when they're off sick, because they're injured on the job, is off by 5% at the same time employers are getting a 5% reduction in their premiums. So injured workers are naturally outraged that they're paying the price of decades of financial problems on their backs and employers are getting a tax break.

**Mr Schepers:** There are a number of issues, none of which I can really address, but I think the root there is that you're right in that the worker wants to get better so he can go back to work. If we go on that premise, then I think you will find that all the costs will be reduced and that's really what we're looking for. We want to make sure it's fair for everyone.

Our industry has never gone to the government and asked them for support in terms of, "We want tax breaks so we can build homes, we want incentives so we can hire people to build homes." We've always asked not to have any government involvement in that.

I think in the housing industry it's true as well with workers' compensation - not workers' compensation - injuries. If there is an injury, yes. If it's a legitimate injury and the employee is truly - the word I'm looking for, sorry.

**Interjection:** Responsible.

**Mr Schepers:** Well, everybody is responsible. We can look at victimization, we can look at disabilities, but I think what we really want to look at is, is the system fair for all parties? Nobody is saying the employer is at fault when the injury happened or that the employee is at fault. We're saying there needs to be fairness in all this.

**Mr Christopherson:** Let me ask you, how can it be fair if injured workers are going to get 5% less and employers are paying 5% less in their premium? How is that fair?

**The Chair:** Mr Christopherson, I'm sorry, we should go to Mr Stewart, please.

**Mr R. Gary Stewart (Peterborough):** Sir, I appreciate that we've heard today that the construction industry is unique and there are some major concerns on behalf of the workers as well as the employers on this. In one of the areas where we were last week, there was a suggestion made - I guess we're all looking for recommendations and solutions - that possibly the pooling of finances for rehabilitation across the province might have some thought. As well, we're looking at a pool for those who may be partially rehabilitated but may be able to do less or modified work. Has your industry in this part of the country talked about something like that?

**Mr Schepers:** They may have. I can't answer the question.

**Mr Stewart:** Do you think it would work to try and address a rather unique part of our society?

**Mr Schepers:** I think it can. Again, if we can treat the injured employee fairly and treat the way the system is being funded fairly, then it can work.

**Mr Stewart:** One of the concerns was that there are some very, very large construction companies and some very small ones, and of course some of the workers may get hurt and be off for a couple of weeks and want to go back and the fellow has either moved out of the province or is not in business or whatever. I guess what we're looking at is some way to make sure the worker is protected but have everybody contributing to the cost of it who is within the industry itself, because they're all going to benefit by it.

**Mr Schepers:** If somebody is coming in from out of town — particularly in the housing industry in Windsor we've had a lot of out-of-town contractors coming into town, small and large, over the last few years. Pooling across the province certainly would work. At least the resource you're drawing from would be a broader base.

I don't know whether that would address the high costs we have, though, in the assessment rates. The assessment rates have jumped —

**Mr Stewart:** Maybe it would if both large and small were part of it.

**Mr Schepers:** It's possible.

**The Chair:** Gentlemen, that concludes our time. Thank you very much. You're our last presenter of the morning. We appreciate you taking the time to come before us today.

Colleagues, we'll reconvene this afternoon at 3 o'clock.

*The committee recessed at 1224 and resumed at 1500 in the Westin Hotel, London.*

**The Chair:** The standing committee on resources development is pleased to be in London and welcome members of the public to join us here this afternoon.

**Mr Christopherson:** On a point of order, Chair: As I have done in every community we've been in, and particularly after what we heard this morning, fresh on the heels of listening to injured workers and their legitimate right to be heard at these hearings, I wish to place a motion before this committee that we recommend back to the government and the House leaders that these hearings be extended and that in particular the committee schedule another full day in London to give the people, who deserve an opportunity to be heard, a chance to do that. I now place that before this committee.

**The Chair:** As you know, Mr Christopherson, that's very similar to the other motions that you have placed before the committee. This committee does not have the power to extend its hearing time. That is determined by the House leaders in negotiations at the Legislature. I'm afraid I have to rule your request out of order.

**Mr Christopherson:** I then of course seek an opportunity to have unanimous consent. If we got unanimous consent of every member here, my motion would be in order. And let's not forget, it wasn't the three House leaders who decided, it was the government that decided, that there would only be six days. Therefore, I request all members of the Legislature on this committee to agree to unanimous consent that would allow a motion to extend the hearings and have this committee come back to Lon-

don in particular and hold the kind of proper democratic hearings that injured workers are entitled to.

**The Chair:** Is there unanimous consent? I do not see unanimous consent. I'm sorry.

**Mr Christopherson:** Who opposed that, Madam Chair?

**The Chair:** There are several. We move now to our presentations.

*Interruption.*

**The Chair:** Order, please.

**Mr Christopherson:** For the record, those who opposed were members of the government, the very people who limited these hearings in the first place.

*Interruption.*

**The Chair:** Order, please.

## LONDON HOME BUILDERS' ASSOCIATION

**The Chair:** Our first presenters are representing the London Home Builders' Association. I believe it's Mr Low. Welcome, sir. You have 20 minutes in which to make your presentation. You may choose to allow time in that 20 minutes for questions.

**Mr Ian Low:** Good afternoon. My name is Ian Low. I am the president of the London Home Builders' Association and the owner of a second-generation business established in 1963 which acts as a supplier to the new construction industry and renovation market.

The London Home Builders' Association was formed in 1952 and currently has a membership of 220. The membership is made up of builders, land developers, renovators, housing industry suppliers and subtrades, professionals, apartment owners and managers and numerous other small businesses which provide a wide range of services to the housing industry. The London Home Builders' Association is a member of the Ontario Home Builders' Association and is the fourth-largest local home builders' association in Ontario. Our members produce over 75% of the new housing and renovations in London and surrounding areas. We are in support of comments made by the Ontario Home Builders' Association and its committees to the government and opposition parties.

We wish to highlight for this committee that the constituents of the London Home Builders' Association represent both the employers and employees of the non-union construction sector. A large constituency of the London Home Builders' Association is made up of small home businesses versus large corporate entities. Many of our members work on the sites side by side with their employees, thereby ensuring their employees are working in safe and healthy environments.

*Interruption.*

**The Chair:** Order, please.

**Mr Low:** As a result of this, we take all the recommendations in Bill 99 and existing WCB legislation very seriously in our day-to-day operations. In view of our membership's direct interest and the implications of



Bill 99, we are grateful for the opportunity to address the committee on this important topic.

The residential construction industry has made great strides in improving its safety performance. The Construction Safety Association of Ontario reported at its spring annual meeting that despite a regrettable increase in fatalities, a record low lost-time-injury, or LTI, frequency was established in 1996. In fact the LTI frequency has been reduced 11 years in a row. Ontario also continues to outperform every other province in construction safety. Unfortunately, our industry is saddled with much higher assessment rates than all other provinces except for Quebec, and in fact the home building rate group witnessed a 22% annual increase in its standard assessment rate for 1997 to \$9.56 per \$100 of payroll. The median across Canada is \$5.77 for 1997.

The London Home Builders' Association, in conjunction with the Construction Safety Association, continues to educate our membership to increase awareness and safety in the workplace.

#### 1510

It is our belief that the current practice of 90% replacement rate for an injured worker is set too high. When the tax implications are worked into this rate, the worker is most often earning more than their pre-injury rate. We believe the proposal to reduce benefit levels should be modified somewhat. For short-term disablements we believe 80% of net average earnings would be fair and equitable to both the employee and the employer and would be an appropriate way to reduce duration and cost of claims. Long-term disablements — lasting more than five weeks — should be compensated at 85% of net, as Bill 99 proposes.

The benefits structure was amended in 1990 under Bill 162 when the dual award system was introduced: future economic loss, FEL, and non-economic loss, NEL. While we have no major qualms with the concept, there are cases where FEL pension payments continue to be made even when the material circumstances of the worker have changed, ie, the worker has returned to work and has suffered no wage loss. Situations like this invite other workers to abuse the system.

A few cases of unwarranted compensation might not result in a major financial burden, but when there is systemic overcompensation, this creates a tremendous burden not only for WCB but on employers in particular. As these FEL pensions are locked in after a final review five years after the date of initial determination, we are only beginning to feel the effects of FEL. The first wave of these FEL pensions became locked in last year and eligible workers will continue to be paid until age 65.

Between 1990 and 1996, construction was essentially in a market trough, and one of the characteristics is high unemployment. Workers who were able to return to productive work did not have the opportunity. This is a major reason why the proportion of costs which are attributed to FEL are much higher in construction than in other industrial sectors. We predict that these costs will continue to

grow, even with the positive changes being contemplated under Bill 99.

It should be added that when benefits are so generous there is little incentive for workers to return to work even if work is available. We understand that the early return to work is one of the major objectives of Bill 99, and we fully support it.

Three-day waiting period: The London Home Builders' Association has been advocating the implementation of a three-day waiting period in Ontario for a number of years. The Ontario Home Builders' Association told the Royal Commission on Workers' Compensation that this approach should be investigated: "There needs to be more time to assess moderate injuries and arrange modified work in consultation with the medical practitioner before the case becomes a major lost-time injury and the experience rating incentive is lost." This presentation was made to the royal commission on March 23, 1995.

Unfortunately, we understand that the Minister of Labour has rejected the notion of a three-day waiting period for three reasons. We will cite the comments made by the minister at the ECWC conference on June 19, 1997, and then provide what we believe are logical answers and/or solutions to the minister's concerns.

The minister was quoted as saying, "Firstly, there is no compelling evidence that a waiting period by itself has any significant impact on workers' compensation systems."

Our response: While the statement by itself may be true, the London Home Builders' Association has received correspondence from the chair of the New Brunswick Health, Safety and Compensation Commission, which asserts that "the impact of the waiting period has been significant but cannot be examined independently from the other legislative changes which took place in 1993.... We are unable to unwind all these changes into single components." This program is viewed as a success in New Brunswick because of its role as "gatekeeper" to the system, and the WHSSC continues to use the three-day waiting period.

The minister was then quoted as saying, "Second, it penalizes workers who are legitimately injured, particularly workers whose duties expose them to danger, such as police and firefighters."

Our response: The New Brunswick commission, as part of its consultation process, has heard that emergency workers should not be subject to a three-day wait while in the line of duty. By this fall, the commission will be making recommendations with regard to legislative changes for injuries sustained by these workers. Another solution would be to adopt a voluntary three-day waiting period.

The minister was then quoted as saying, "Third, such a recommendation would have required inappropriate intervention in collective bargaining relationships since the benefits waiting period, to be effective, would have required a prohibition on negotiated top-ups."

Our response: We believe that if the government is able to facilitate an orderly transition for public sector workers in the complex area of hospital and school board amalga-

mations and mergers, then surely this aspect could be handled relatively easily. It is our experience that many long-term and short-term insurance plans have a waiting period often in excess of the three-day period we are proposing. A waiting period of this length is not uncommon in the insurance industry.

We believe that financial incentives or penalties have proven to be a useful method to influence site safety through the internal responsibility system. In construction, a separate experience rating program was created, and this has proven to be an effective way to encourage accident prevention. In fact, CSAO confirmed in a 1994 annual report that CAD-7 "has played a major role in reducing Ontario's lost-time injury rate." CAD-7 has been so successful that there has been a slight off-balance compared to the board's other experience rating program, NEER, because the board has underestimated our industry's ability to reduce its rate of lost-time injuries.

The board of directors of WCB is meeting to discuss small employer experience ratings in the next few days. It is with great regret that our industry has not been consulted on how this program will work and its implementation. Not only has our industry been lumped in with non-construction but also the costs incurred on any claims have not been included in the calculations for rebates or surcharges. It is our hope that our industry will be consulted when dealing with this issue because of its complexities and its potential impact on our industry. LTIs have been greatly reduced over the last few years with RTW implementation. This has reduced the cost to WCB, but in conjunction with FEL and NEL has motivated employers to focus on health and safety issues. It is our industry's belief that RTW objectives are key to workers' compensation and their goals.

I indicated earlier in my presentation that the mass majority of our membership are small employers who do not have the opportunity to offer modified work. As a result, we feel the employer should be given the opportunity to find modified work for his injured employee and receive benefits through a credit system for their initiative. When the worker will not return to work with the injury employer, the situation should be identified as early as possible and a transitional work program developed. The priority will be to keep the worker in the construction industry.

It is our belief that workers' compensation rates are extremely high for the construction industry and are a hindrance to job creation in our sector. Our association fully supports the steps taken by the board to eliminate any attempts of abuse within the system whether it be by employers, workers, physicians or even board staff. This initiative must continue to send a clear message to those who have been abusing the system and instil confidence in WCB. The result of these actions will be a system which provides assistance to those workers who truly require compensation.

An honest assessment of Bill 99 shows that it is not a radical change; in fact, the basic tenets survive and are

strengthened by our changes. Bill 99 brings forward new expectations of cooperation and communication between employers and workers along with a renewed sense of accountability. The London Home Builders' Association fully supports Bill 99 with our modifications, and we urge the committee to help fast-track this reform process so that changes can go into effect by January 1, 1998.

On behalf of London Home Builders' Association I wish to thank the committee for the opportunity to appear before you here today.

**Mr Christopherson:** Thank you for your presentation. There's a lot I'd like to take up with you, but the one I want to focus on is your thoughts that a three-day waiting period is okay for everybody except emergency workers, and I'd like to hear why. I agree that emergency workers shouldn't be penalized, but I'd like to hear why it's okay to penalize other workers.

**Mr Low:** When we were going through committee reports and recommendations, it was felt that certain sectors of the workforce have a higher degree of danger involved in their day-to-day activities.

*Interruption.*

**Mr Low:** Construction is obviously one of them, as my fans behind me are pointing out. The one thing we see with critical services is that they have to make split-second decisions in their line of work, as all of us do in our day-to-day activities, but theirs is just at a higher degree of danger. That was the rationale behind it, as well as the fact that New Brunswick saw that as a major concern and they're a few years ahead of this process here in Ontario.

1520

**Mr Christopherson:** The difficulty I have with that is, after an injury has taken place, paralysed is paralysed, dead is dead, and it doesn't matter what you do for a living if you've been injured on the job through no fault of your own. It sounds to me more like the politics of worrying about public reaction. Because the police, firefighters, ambulance workers and others are held in such high regard, the politics of this is, "Don't touch them but it's okay to go after everyone else." That's the reality, sir. The fact of the matter is that it's discriminatory and it suggests that everyone except this group of people want to defraud the system.

**Mr Low:** The one thing that you'll see as a result of the construction industry in the last number of years, as I have pointed out, in the last 11 years we have been bringing down the length of time for people to return to work. Return-to-work action is key to any implementation and we feel that it's justified. It has been tried in other areas such as New Brunswick, and we truly believe it will work in Ontario.

**Mr Christopherson:** But if you care that much about your employees, why would you want to penalize them if they've been hurt on the job through no fault of their own? Why should they be out of money?

**The Chair:** We have to go to the Conservative caucus, please.



**Mr Christopherson:** Why should they be out of pocket money?

**Mr Stewart:** A number of times the Ontario home builders' associations have made presentations regarding — and I asked this question this morning — a pooling of resources for rehabilitation and modified work. The problem, as we understand it, is unique within the construction industry where there are a lot of large operators and a lot of small independent ones may be out of business by the time the person returns or whatever. Certainly a lot of it is heavy lifting and heavy work, but some other types of construction may have the opportunity for modified work. Do you think a pooling in that type of vein might work within your industry?

**Mr Low:** I definitely believe that it will work just for the simple fact that, as you can see in my initial outline, locally 220 members, we are a diversified group of companies ranging from one extreme to another. As a result, if a worker is injured on site, there may be another company within our local association that may be able to network and find another opportunity for employment.

**Mr Stewart:** How about pooling for the rehabilitation portion of it as well because of the type of industry it is where it's so diversified on the size of companies?

**Mr Low:** Most definitely. We'd be able to do that and join forces province-wide to initiate that action.

**Mr Patten:** Thank you for being here, Mr Low. There was another home builders' association this morning in Windsor. My question is related to your statement that you don't see this as a radical shift. I'd like to ask you about that in light of, as we look at the bill, we see employers getting a break on premiums, we see the board centralizing power in the board body with policies to be determined by them, we see a loss of independence of research, we see a loss of benefits for workers and a loss of eligibility of what heretofore was considered to be a legitimate possible claim. Just considering some of those factors, and there would be others, do you really believe this is not a radical change, at least from the point of view of injured workers, which is what the plan was to be? It was a workers' compensation plan; it was not an insurance program.

**Mr Low:** Most definitely, and the one thing that I would like to point out to everyone here is that our first priority is our employees because they are our lifeline to begin with. In order for us to ensure their safety and our prosperity as organizations, that's one reason the home builders' associations throughout the province have been bringing forward education for health and safety issues.

One thing you can see in my presentation, once again, is that our construction industry has been hit hard too: a 22% increase over last year's premiums and they've just been continuing to escalate. That only means one thing coming back to the table, increased costs and a chance of fewer jobs being created. The biggest thing is education, just ensuring that everybody is aware of what is safe on a job site, what is not safe on a job site, letting the workers know what their rights are. We're not here to take away

their rights and their privileges. We're here to ensure that they're working in a safe environment, that they're able to prosper and continue a long career.

**Mr Patten:** If you're concerned about the safety aspect, health and safety of the workplace, would you not agree that it would be important to maintain the independence of the Occupational Disease Panel?

**Mr Low:** On that one, to be honest with you, I would have to respond in writing because that would go back to the committee. I don't know that one in depth, and that's being honest with you. Would you like me to get that in writing to you?

**Mr Patten:** That would be great.

**The Chair:** Thank you very much, sir. We appreciate your taking the time to come before the committee today.

**Mr Low:** Thank you very much, one and all.

#### LONDON CHAMBER OF COMMERCE

**The Chair:** I'd like to now call upon representatives from the London Chamber of Commerce, please. I believe it's Mr Redmond, Mr Blazak and Ms Landgren. Good afternoon. Welcome to the committee.

**Mr Gary Blazak:** Good afternoon. My name is Gary Blazak and I'm the president of the London Chamber of Commerce, London's oldest and most representative business organization. We thank you for the opportunity to appear here this afternoon. With me is Catherine Landgren, who sits on the chamber's human resources committee and chaired the task force that resulted in the presentation we're making today.

Workers' compensation reform has been a high priority issue with our corporate membership for some time now. Collectively our corporate membership employs more than 50,000 people in the London area. In 1994 and 1995 we conducted surveys of our membership to identify issues related to WCB reform. A large part of our presentation today is based around the framework of the issues that were identified in those surveys of over 1,000 corporate companies which form our membership base. We'll refer to several of those issues in our presentation, focusing specifically on the issues related to definition of "accident," benefits, return to work and release of medical information.

First we'd like to comment briefly on the government's direction with respect to workplace safety and workers' compensation issues in particular. We believe that the direction of the legislation is, in general, positive. We applaud the increased emphasis on the responsibility of the workplace parties for occupational health and safety. Employers believe it is appropriate to keep a strong focus on accident prevention and early return to work. For the most part, we can accept the employer's obligations in these areas as set out in the bill. In several instances, however, we believe that the legislation as now worded may open the door to administrative decisions or WCB policies that would make it difficult, if not impossible, for employers to fulfil those obligations.

For more information on our detailed presentation in the areas of "accident" definition, benefits, return to work and release of medical information, I'll turn the microphone over to Catherine Landgren.

**Ms Catherine Landgren:** Thank you, Gary. As a member and volunteer of the London Chamber of Commerce for five years, and having to deal with the workers' compensation boards across Canada for the past 15 years, I was nominated to present to the committee this afternoon.

Given the many changes put forth in Bill 99, it was difficult to narrow our choice of topics within the time allowance. We have settled on four issues which we believe are critical components to the success of this reform, especially if it is to have common sense. The four topics include definition of "accident," benefits, return to work and functional abilities information.

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Considering the proposed definition of "accident," it is the government's intention to preclude chronic stress and limit chronic pain. However, with respect to chronic stress, there is no specific wording addressing this item, and with chronic pain, the question is, how will it be limited? Actually, we would like chronic pain eliminated.

What the employer community would like to see are regulations written describing the parameters of entitlement. The threshold needs to be specifically stated and may be worded such as "where the employment is the predominant cause of the injury or illness." The difficulty employers have is with such diagnoses as repetitive strain injury and chronic pain where the entitlement is too subjective. Regulations would provide a clear direction for entitlement.

Benefits were high on the list of our membership when we conducted a survey in 1994 in response to the royal commission. Three changes were demanded: reduce the rate to 70% of mid-average earnings; institute a three-day waiting period similar to other disability management programs; include workers' compensation benefits as taxable income.

In response to part V of Bill 99, this is a welcome change on two fronts. It restores the employment relationship in managing return-to-work matters and it will hopefully eliminate the WCB's rehabilitation services. The trend to change WCB's role in this area to alternative dispute resolution would be more appropriate but only if specific regulations can be established by the government. The interpretations and leeway given by the WCB in this area over the past 10 years are clearly why the changes in Bill 99 are proposed but also demanded by the stakeholders.

Accredited bodies in rehabilitation and alternative dispute resolution should be required and thus part of the legislated regulations. This part of the bill should have an exclusion similar to the re-employment obligation for small employers who will be unduly burdened both financially and administratively by the return-to-work obligation.

Lastly, functional abilities information is the only information the employer community is asking for when responding to the re-employment obligation set out in Bill 162. Although it is currently proposed that the worker and health care professional will provide such information to the employer, it has been the experience of the employer community that this is easier said than done.

Successful return to work, both early on and safe, is dependent upon such information, but how can this be accomplished without a specific regulation? How will the process continue throughout the period of rehabilitation once the worker has returned to the workplace? These are questions which the government must answer and respond to by way of regulations included with this bill.

In conclusion, a systemic disease exists as the fundamental cause of the erosion surrounding occupational injury management in Ontario. The disease is at two levels: with the government, where no one political party has provided clear or concise legislation so as not to allow for varying degrees of interpretation of the intent of the law, and with the administrator of the law, the WCB, which has not consistently applied the law when writing the policy and in their daily practices which vary from office to office and decision-maker to decision-maker.

Our theme has been to show this committee that the government needs to provide more specific language as well as include regulations to this Bill 99 to avoid misinterpretation of administration and appeal at all levels.

**Mr Hastings:** Thank you very much for making your submission, but I am rather disturbed and even mystified as to why you were asking for an exemption on the return to work for small business employers under 20. That would clearly indicate to me that the small business community hasn't really thought through how you can develop comprehensive and effective return-to-work programs. It gives me the impression – I'm completely uncomfortable with it – that the small business community, for those under 20, are abandoning people in their employment, simply by the numbers. I'd like to know what your substantial rationale is rather than simply asking for an exemption because it's 20 or under.

**Ms Landgren:** In response to that, it's the same premise that is used when you looked at the current section 54 that has to do with re-employment. That also applies to employers less than 20. I don't think that the small employer under 20 has abandoned return-to-work processes, but the intent, as I understand it, of this piece of law, which is section 40, is asking more for a formalized return-to-work program that will not exist for small employers. Fundamentally, they cannot administer that and, at the present, there is not enough information for even a small employer to consider whether it's feasible for them to do it.

**Mr Hastings:** Aside from your request for an exemption, I'm also rather mystified in this presentation as to why the chamber wants to ensure there is a return-to-work program without the WCB's presence in terms of a financial penalty. How will we ensure for those in businesses



that are over 20 employees that in fact we will get a successful return-to-work program implemented?

**Ms Landgren:** It is not the elimination of the WCB from the process. It is simply that the WCB should not be the driving force behind it. The difficulty lies with the barrier that is created between an employer and employee during the process. The board should be there, as I stated, as an alternative in dispute resolution and that's clear in the legislation. How that process will come about and what the penalty should be needs to be addressed further in the law.

**Mr Maves:** What is it exactly about section 40 that you find so onerous?

**Ms Landgren:** It's too broad. It's not specific. I'm not sure what the word "cooperate" means —

*Interruption.*

**The Chair:** Order, please.

**Ms Landgren:** — and I think in my experience over the last 15 years leaving that word open to interpretation by the administrators can cause a lot of difficulties and not accomplish what the intent of the law is.

**Mr Maves:** What has been your experience with return to work?

**Ms Landgren:** Depending on who is driving it, whether it's a joint venture by the employer and the employee, then it's always been my experience that it is successful. When the WCB becomes involved and there is a degree of interpretation that varies, the return to work is not successful.

**Mr Hoy:** Thank you for your presentation. I also want to talk about this rehabilitation to the employee by the employer, that working relationship. This morning it was described as privatizing, having this working relationship go on. However, if an employer has 20 or less, I can rather understand that they wouldn't have the administrative resources for rehabilitation of that employee. This gentleman was, I believe, talking about employers who hire many more than that, and he said it was going to bring about an added cost to business, and in many of the presentations business wants to reduce costs.

I have some problem understanding why you want the WCB removed as that third party. Do you not agree with the other presentation that perhaps employer costs would go up? I can envision employers saying, "You've got to reduce my rates because I have this other cost now," some time in the future. Apparently you don't see the value of having the WCB involved at all times.

**Ms Landgren:** I disagree with the other presentation wholeheartedly. I believe that the legislation and the trend over the past 15 years has been that employers are taking a greater interest in the management of occupational injury, one component of that being return to work. In fact, I don't think the employer community sees that as a cost in administering return to work but rather as a reduction in their costs. When an employee is off work for any reason, that's costing them money. To see just an earliest return to work possible is always their goal. I don't see it as down the road them asking for a rate reduction because of that.

**Mr Hoy:** But you also say if there isn't a workable solution between the employer and the employee, you would go back to the WCB for an arbitration type of ruling, right?

**Ms Landgren:** I believe alternative dispute resolution, as the board is now calling it and is using it, is a good thing as long as there are accredited people looking after it, and not necessarily the administrators at the present.

**Mr Hoy:** A good body for that type of work would be a body of employers and employees.

**Ms Landgren:** If they are fully accredited in alternative dispute resolution, yes.

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**Mr Christopherson:** Thank you, a fascinating presentation. I want to first of all say that listening to Mr Hastings, I wonder if instead of the 401 from Windsor to London it wasn't the road to Damascus. Perhaps by the time we get to the end of these hearings I can get them to agree to unanimous consent so we can put a motion on the floor and have some real hearings.

Ms Landgren, I have to tell you, when you've got the Tories criticizing you, you've really got to wonder where you are. This is about as far out as we've seen so far. One thing you said, that I didn't see in your script but that you did say, was "the changes in Bill 99 as requested by stakeholders." I just wondered what part of Bill 99 you think injured workers had asked for.

**Ms Landgren:** I don't think, in my experience, that the injured workers are extremely happy with the rehabilitation process currently at the WCB.

**Mr Christopherson:** Do you think they asked for what's in Bill 99?

**Ms Landgren:** No, I think they asked for a change.

**Mr Christopherson:** I want to move on just a little bit. The other thing I wanted to ask you — again you went off your script. You said that chronic pain ought to be eliminated. Could you explain to me what you mean by the fact that chronic pain ought to be eliminated?

**Ms Landgren:** Unless chronic pain is clinically diagnosed, it shouldn't be accepted at the WCB. If it's not accepted at the WCB, it shouldn't be part of the law. There's a difference between chronic pain that's accepted at the WCB and the clinical diagnosis that exists out there. If it's been clinically diagnosed and it's been established that it relates to the work injury, we don't have a difficulty with it. It's when chronic pain is diagnosed and the clinical diagnosis isn't the same. Because somebody calls it chronic pain and because it's not the actual clinical diagnosis — they are two very different things. There is medical testing you go through to diagnose chronic pain: trigger points, behavioural differences, all those things. There's a difference in what's being accepted and what truly should be accepted.

**Mr Christopherson:** But we are at the point where we're actually talking about the law, the regulations and the policies of the board which would decide where those thresholds are. A statement like yours means that the

policy ought to be that there is no chronic pain that's allowed to be covered, that it's not compensable.

**Ms Landgren:** I think one of the things of our whole presentation is that the policy differs greatly from what the law says, and that's part of the problem. There has been no one government that has actually sat down and added some regulations and specifically said what the intent of the law is. For example, FEL awards: As we sit today in 1997, there is no policy for review of FEL awards, yet they are being granted every day.

**Mr Christopherson:** I want to move to one more area before my time expires. We've been watching almost an auction in reverse as we move from community to community. The first time was in Thunder Bay, when I saw someone recommend that cutting injured workers' income from 90% to 85% wasn't good enough, that it ought to go to 80%. I saw that repeated again this morning. Now you've lowered the ante and gone to even 70%. Can I ask you why you want to make second victims out of people who have been hurt on the job through no fault of their own? Why do you want to penalize them as if they've done something wrong?

**Ms Landgren:** That figure comes from a survey that was done three years ago. There is no subjective question that followed that; I simply have the percentage to offer you today.

**Mr Christopherson:** But it says here, "We urge the government to consider further reducing" —

**Ms Landgren:** That's what the membership said three years ago.

**Mr Christopherson:** Can you tell me why?

**Ms Landgren:** We didn't go back to ask the membership the reasoning for it. That survey was conducted for the royal commission, and when the royal commission was disbanded when the new government came into power, we didn't go back to ask the questions, which we normally would do.

**Mr Christopherson:** I'm sorry, I guess I'm a little unclear. You make a recommendation urging the government to do something but you have no idea why you would put that in your own presentation.

**Ms Landgren:** Because our membership did indicate previously that they wanted people's income to be equivalent with other disability management programs.

**Mr Christopherson:** Perhaps you could send us a secondary document that outlines which of these recommendations you really mean and which ones you only pretend to sort of mean, because it's very unclear.

**The Chair:** That concludes the presentation time. We thank you for taking time to come before us with your views this afternoon.

#### LONDON REGIONAL ADVOCATES GROUP

**The Chair:** I now call upon representatives from the London Regional Advocates Group.

**Ms Sue Green:** Hello. My name is Sue Green. I am a member of the London Regional Advocates Group. I am

an injured worker, one of the major stakeholders that this committee is trying to ignore. Information about Bill 99 and its effects on those already injured has been minimal. I have had dealings in the past with a lot of injured workers in my capacity as past president of the injured workers group WRIST, a member group of the Ontario Network of Injured Workers Groups.

Poverty is no stranger to the injured worker. It is a companion. They did not choose it; it became an unwanted and undeserved way of life. Permanently disabled workers are weaned off money. To have an injury is to learn to be poor. I was introduced to poverty when I became injured. Let me demonstrate what I mean. If I was able to work last month, my wages would be equal to \$3,130 net. This is based on the current wages for an industrial maintenance millwright mechanic in this area. With this \$3,130 I would be able to pay my mortgage, my groceries, utilities, clothing, insurance, transportation etc, and by the time I had reached the point that my financial obligations had been met, I would have had money left over to save, possibly for retirement or a family vacation. I would be contributing approximately \$129.68 to the Canada pension plan monthly and contributing my fair share to the tax base.

I was injured in 1984. That means that my injury falls into the pre-Bill 162 category. I would have to assume that I will be fairly compensated for my injuries and by law I cannot sue. I receive 90% of my pre-accident wages, or \$2,717, a difference of \$413 per month. Time passes, and my injuries, although healed as much as they are going to, will not allow me to go back to my old job. The words "vocational rehabilitation" ring out, words that are unfamiliar to me. Instead of 90% of net, my cheque becomes 50% of my wages, or approximately \$1,500 a month.

Meanwhile, through all this the injured worker strives to live within his income and maintain a life. Life savings are dwindling or gone, homes are lost, credit ratings destroyed and marriages and family life break down under the financial and emotional stress and physical suffering. Then the feared words come: "You are unemployable due to your injuries." I was able to work before the accident, but due to my compensable injury I am exempt from the workforce through no fault of my own. Reality hits you hard. Another cut to your income is about to occur.

Now the real figures of the finances of the injured worker: My total monthly income from WCB now stands at \$985.93, irrelevant of whether I have a family to support or am single. This is composed of a 30% permanent disability pension, the 147.4 supplement and the \$200 supplement, a far cry from the \$3,130 I could be earning if not for my injuries.

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The main feature of Bill 99 is the deindexing for all 29,879 147.4 recipients. This is to offset the unfunded liability. Compensation for our injuries will no longer be fully indexed to the cost of living, a direct violation of Justice Meredith's principles. Groceries, accommodation, clothing and transportation prices will steadily go up



according to recent market forecasts on inflation. Our ability to make ends meet dwindles with each passing month. Many injured workers will be forced to become a burden to their families and society and go on welfare and Canada pension just to keep up with the rising cost of living.

Let's look ahead into our future under Bill 99. Take the pension I would receive for a month in the year 2014 and exchange it for this year's dollars. Because the cost of living has not been fully added each year, I would be able to purchase about \$214 worth of goods. That does not go very far in paying bills, not for a family or even one person. It certainly doesn't meet Justice William Meredith's principle of security of benefits: "Compensation should be paid as long as the disability lasts and the amount of compensation should have relation to the earning power of the worker." This is the effect for workers injured before 1990; 29,879 will be affected in this same manner.

Anyone receiving a FEL award or those permanently injured with no 147.4 supplement will also feel the clout of this bill of death. Their cost of living will be deindexed another quarter of a percent. People receiving an FEL will have the pension portion of their retirement reduced from 10% to 5%. Please remember that an injured worker is no longer paying into the Canada pension plan, or if they are working and receiving an FEL benefit, they are paying into the Canada pension plan at a reduced rate reflective of their loss of wages due to the limitations imposed by their work-related injury. Vocational rehabilitation failed miserably in many cases to put the injured worker back to work at their pre-accident earnings. Bill 99 is further failing to give even the right to vocational rehabilitation or the right to return to work. Instead of strengthening the return to work, section 54 of the bill undermines it.

Permanent injuries are just that. Injured workers must learn to accommodate their permanent injuries for the rest of their lives. Now it seems that we must learn to do it on nothing. We gave up our right to sue for fair compensation, and now it seems that fair compensation is being swept out the door. Does this mean that the door will also remain open for us to sue?

**Ms Jody Jones:** My name is Jody Jones. I'm a WCB representative for the American Federation of Grain Millers Local 154 and an active member of the London Regional Advocates Group.

Laws are passed to protect working people because without them employers will act in their own interests, which is usually financially driven. This puts every death and injury on the back of this government. Bill 99 clearly has one main objective, that is, to reduce employer premiums and liability at any price.

Presently it is mandatory that an employer must report an injury or disease within three calendar days when that injury or disease results in the worker requiring health care — sounds pretty straightforward, but as clear as this sounds, we argue over the definition of health care. Just the other day I was told by a manager of the London WCB that if a medical doctor examines a worker on company

premises it doesn't count as health care. Can you believe that the definition of health care can be stretched this far? Well, it has. Bill 99 just further complicates, restricts or eliminates the reporting of injuries or diseases.

Contrary to popular belief, employers are not currently eager to file WCB claims. In the workplace, harassment is alive and well, discouraging workers from reporting injuries as work-related. Workers are reminded of the hassle-free insurance plans and are given rewards for the most days without a lost-time accident. If you believe these rewards are in the name of accident prevention, you are sadly mistaken. This is simply to discourage reporting. Imagine, your department is just about to win a new spring jacket for six months accident free. You feel a sudden sharp pain in your back while making an awkward lift. Do you risk your co-workers missing out on their jacket and enter the dreaded workers' compensation system, or do you report the injury as non-work-related and pray for recovery?

Now, enter Bill 99. Same scenario, only you must fill out a form, a form obtained from God knows where, that you might not even be able to read or understand, and give a copy to your employer. This bill permits the employer to suppress claims and intimidate workers rather than preventing injuries.

Statistically, Ontario will be the safest place on earth. In fact the key here is prevention — not prevention of injuries but prevention of claims filed with the WCB. If the government can prevent injured workers from filing claims by making it as difficult as possible to file, then its job is complete. No files claimed equals employer rebates equals the happy employer.

Actually, there's not really any need to ram the rest of the bill through. Think about it. If this government concentrates strictly on prevention, the prevention of filing, the employers will be happy and thus the injured workers will be offloaded to the taxpayer. If no record of the injury exists, the employer wins. Welcome to the new Ontario, a place where fairness and justice and equality no longer have standing, a place where survival is based on wealth and power.

We have before us legislated harassment. I promise you that the working people of this province will be here to remind you of your responsibility for each worker killed or injured on the job as a result of employer self-interest.

Now, just in case a few workers do get the courage to file a claim, the most obvious way to keep the employer costs down is to tamper with the appeal system. Enter sections 118 and 119 of Bill 99. If the WCB gains full control of the decision-making power of the Workers' Compensation Appeals Tribunal, then no worker will ever significantly challenge decisions again. I guess it's kind of like putting the fox in charge of the henhouse. Now we have control at the source: filing of claims controlled by the employer and an appeal system controlled by the employer.

Bill 99 clearly limits the decision-making power of the appeals tribunal to board policy, where one exists. What

happens if there is an unfair or incorrect policy? Could there be any bad policies? I'd like to bring your attention to policy 05-04-06, titled "Reduction or Suspension of Benefits." This is a policy that clearly discriminates against women. The policy permits the WCB to reduce or suspend benefits if the injured worker discontinues or refuses treatment that may bring harm to an unborn child. In 1993, members of London Regional Advocates Group and two area MPPs challenged the WCB on this very policy. One example was a pregnant worker whose doctor refused her an X-ray because of the risk to the unborn child, and the other example was a woman who refused prescribed medication because of the risk to her unborn child. The response of the WCB chair and the WCB vice-chair was that they were aware of the problems with the policy and committed to us, in writing, in 1993 that a review of the policy would be a top priority. Guess what? It's 1997 and the policy sits today unchanged and dated July 26, 1990.

In the future under Bill 99, the appeals tribunal will be bound by this policy. Restricting the appeals tribunal to board policy removes our ability to challenge and correct unfair or clearly unethical policies. Is this what this government wants? Is this what the employer wants? Where is the justice when a policy that could clearly risk the lives of unborn children, and obviously discriminates against women, becomes enforceable by the highest and most respected level of appeal?

The appeals tribunal must maintain its independence to maintain credibility. What kind of government do we have that eliminates the only hope of a fair and just workers' compensation system? On behalf of the many who were denied access, I thank you for this opportunity to speak.

**Mr Hoy:** Thank you very much for both presentations. Presentations from injured workers and those who are learned in what happens to injured workers probably benefit us the most. We get firsthand knowledge and firsthand examples of your plight and your experiences.

You had a great deal of concern for the appeal process towards the end of your presentation. How do you envision the future rights of the injured worker after Bill 99 is passed? What major effect will the appeal process, or lack of, have on injured workers?

**Ms Jones:** In the example I gave, had a decision been taken to WCAT on that policy, chances are policy gets rewritten. Policy is an interpretation of the law by whom-ever, and if there is something wrong with that policy, WCAT has the respected decision-making power to change that. They interpret law.

1600

This policy was an example, and there are lots of policies like that, but they don't always come to light. We tried to change it without taking it through the appeal system, because we noticed it early, and we got nowhere. We appealed in 1993 and a lot of people wrote the government. I have all the documentation here and the response in writing from the board, where they assured us it was a top priority, the policy would be looked at and they

were well aware of the problems, and nothing has happened. So WCAT would now be bound by that policy and there would be no hope for change in policy.

**Mrs Boyd:** Thank you both very much for your presentations. Sue, it's very helpful to see that graphic erosion of income you've presented. I think that's the thing most people don't understand, that even if we were not to see a huge decrease in benefits such as was suggested, to 70% of earnings by the previous group, the reality is that this already builds in a huge erosion of benefits, and we can foresee very clearly in the future that people have no future security with the kind of erosion that's implied in Bill 99. You showed that quite graphically in your presentation. Thank you for doing that.

Do you think most workers really understand how severe that erosion is?

**Ms Green:** No, their concept is that the injured worker is well-paid, and when you're getting temporary total you are getting 90% of net. You're not getting more than you were paid when you were working; you are getting 90% of what you were paid.

**Mrs Boyd:** And not only that, you have no opportunity to have increases in your salary or to gain experience and therefore improve your circumstances. You're constantly on a slope that drives you backwards. I think that's something most people don't understand, and if you add that to the attitude that most people who are on workers' compensation must somehow be cheating the system; it becomes very hurtful to workers.

**Ms Green:** Very hurtful. It's hard to hear somebody say there's so much worker fraud. If you were injured, you're injured. There is no fraud there, you know. It hurts in more ways than just the injury. It hurts your family life. It hurts everything.

**Mrs Boyd:** If you had your druthers, obviously you'd like it to just go away.

**Ms Green:** Three thousand, one hundred and thirty dollars a month, yes.

**Mr O'Toole:** Thank you very much, Ms Green and Ms Jones, for your presentation. You bring real clarity to the plight of the injured worker. We've heard that this morning as well. I just want to touch on a couple of points, if I could. We are listening. It's not as if we're characterized as some dark spirit or something.

Just to pick up on your particular case — 1984, was it, or 1985 when you were getting \$3,100?

**Ms Green:** It was 1984.

**Mr O'Toole:** I'm not trying to politicize; I just want to line up the facts here a little bit. At that time Richard and Mr Hoy were in the government, the Liberal government at that time, and then the next period of time I heard about you — you started off with \$3,100 and now you're down to some \$900 — you both talked about the appeals to WCAT and to the appeal process at that time having failed you, or that they would have failed you. The administration at the time you talked about in 1993 was in fact Mr Christopherson's and Mrs Boyd's reign.



The appeal system didn't do you any good at that time. In fact what we've heard across this province very clearly is that there have been reviews in good faith by all three parties since around 1985, and currently. The previous government had a couple of bills. In fact your benefits may have been affected: Bill 165 affected the Friedland formula. It took \$18 billion out of workers' entitlements.

**Mr Christopherson:** We gave her a supplement —

**Mr O'Toole:** The previous government reduced the Friedland formula. It's clear that the previous government did take away in their adjustments to the indexing formula. Are you clear on that? I'm just making sure she is clear on how we got into this —

**Ms Green:** The Friedland formula was applied to the under 100% FEL and the Friedland formula was applied to permanent disabilities. However, if someone was on a 147.4 —

**Mr O'Toole:** Which they didn't; not affected.

**Ms Green:** They were exempt, yes. The 147.4 — deemed unemployable because of their injuries. We have no chance of topping it up.

**Mr Christopherson:** And we didn't give \$6 billion back to the employers.

**The Chair:** Mr Christopherson, please.

Thank you, ladies, for taking the time to come before the committee with your views this afternoon.

#### LONDON HEALTH SCIENCES CENTRE

**The Chair:** I'd like to now call upon representatives from the London Health Sciences Centre, please. Good afternoon, gentlemen, and welcome.

**Dr Robert Teasell:** Thank you, Madam Chairman and members of the committee, for inviting us. I'm Dr Robert Teasell. I work at the London Health Sciences Centre, university campus. I'm an associate professor at the university and I'm also chairman of the department of physical medicine and rehabilitation. Dr Warren Neilson is the director of the rheumatology day care program.

We'd like to thank the committee for an opportunity to speak. We represent a group of university-based clinician-researchers who deal with patients who have chronic pain on a regular basis and also who study it as researchers. Part of our group is Dr Harold Merskey, who is professor emeritus of psychiatry and editor of the *Journal of Pain Research and Management*; Dr David Bell and Dr Manfred Horth, who are professors in rheumatology, Dr Bell being the chief of the rheumatology division; and Dr Kevin White and Dr Hillel Finestone, who are chronic pain specialists at the London Health Sciences Centre.

I've enclosed two documents. The first is a summary of what I'm going to go through in terms of the points I'd like to make that I think are important. The second is an editorial that has been submitted and has been accepted and will come out in the next *Journal of Pain Research and Management*, which directs some of our concerns about Bill 99 and which goes out to 20,000 pain clinicians in Canada and internationally.

We agree that chronic pain and associated disability have certainly increased over the last few decades. It's interesting that it parallels a rise in disability for all medical conditions, but there seems to be a disproportionate increase in the amount of chronic pain disability. The cause of this increase is not known. There are many people who have speculated why it's happening, but the truth of the matter is that we don't know why this increase is occurring.

There are three points we would like to make that we think are important that don't seem to be evident in the debate at the present time. The first is that chronic pain has an organic cause. I think it's important to realize that most of the chronic pain conditions we see follow a soft-tissue injury. There has long been a misconception that soft tissue injuries heal after six to 13 weeks. It's interesting when you go into the medical literature and you try and find out where that came from: It comes from a few animal studies looking at collagen healing and it comes from the observation that most injured workers fortunately recover. However, when you follow patients who develop acute low back pain, neck pain, whiplash, repetitive strain, whatever you want to call them, there's a significant subset of patients in all those groups across numerous countries who don't get better and are left with chronic pain. That's just the reality of what we deal with.

The thing we have concern about is that there seems to be this concept that chronic pain really is not a legitimate entity after six to 13 weeks because soft tissue should have healed. But we're on the verge of very exciting evidence that has occurred over the last five to 10 years that's pointing out a physiological basis for chronic pain. Certainly in an area like, for instance, whiplash, a condition that has long been thought to be a factitious disorder, there's very exciting research now that has clearly identified the little joints at the back of the neck called facet joints as the cause of pain. In fact, the Australians have gone and experimentally now can remove patients' pain for six to eight months and can then repeat that procedure, simply because they didn't give up on chronic pain but accepted it had a legitimate cause. Now we're starting to see people, at least at the experimental stage, with cures for these types of conditions.

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In conditions like fibromyalgia and regional pain syndromes, the typical low back pains we see in patients, there is increasing evidence that we're seeing central nervous system changes that we can document. Pain neurotransmitters, the biochemical substances that transmit pain in the body, are increased to very high levels in these patients when compared to controls, when you examine their cerebral spinal fluid, which is the fluid which bathes the spinal cord and the brain. We have good evidence that the spinal cord changes in animal studies, which can provide plausible explanations for chronic pain, and we're beginning to get very good evidence with our sophisticated technology for changes within the brain. We can actually

identify the brain areas that identify pain lighting up when patients say that it hurts.

We have this type of evidence now. We also know that patients who have more severe acute pain — and this has just come out recently — who have no pain initially, are more likely to go and develop chronic pain, which seems to indicate what we all knew intuitively: The more severe the initial injury, the more risk that it may not heal properly.

We also know there's evidence that biomechanical factors can increase the risk of both injury and pain. So people who do heavy lifting are five times more likely to get injured and develop chronic pain than individuals who work in an office. I think it's clear, and this is what we're concerned about, that the scientific evidence of an organic basis for chronic pain seems to be being ignored. That makes the scientific validity of this type of bill somewhat questionable, if that's the basis for the bill.

The second point that I think is important to make is that chronic pain is not due to psychological causes. I think that's becoming increasingly clear, because there's that implication there in the readings. Certainly, the best research we've had over the last four to five years is clearly pointing to the psychological distress that patients are experiencing as a consequence of the pain they have, not vice versa. We're not seeing patients who had pre-morbid psychological problems suddenly develop pain. That is not the rule. The rule is that they develop their psychological difficulties after they get their pain and injury and can't perform like they used to.

I think it's also important to point out that compensation is often listed as a reason why we have chronic pain and continuing disability. But when people have looked very carefully, the net analysis — the 32 studies of compensation patients versus non-compensation patients — the variance in pain is only 6%. So when we look at compensation patients, it only accounts for 6% of the pain we're seeing.

Certainly, compensation does have a gradational effect on the number of claims, and that's clear. If you're collecting 100% of your wages and you have moderate back pain, you're more likely not going to go back to work and tough it out than if you're collecting 30%, and I think that's quite clear and the literature points that out as well.

Our greatest concern, though, is that when you look at the literature, when you look at the science and you say: "Whom is this most likely going to affect? Who is going to be affected by this type of legislation? Who gets chronic pain? Who becomes disabled with chronic pain?" the literature clearly points out that there are groups that are highly represented in chronic pain disability groups: lower socioeconomic groups, people who are less well educated, patients who don't have transferable skills, who don't have work autonomy, they're older or they do heavier or repetitive-type physical work.

These are the people who are going to be targeted. These are the blue-collar workers whom we would call the working poor. In particular, if you really want to know

who is targeted, it's working women. This is a big problem now. They not only have to work and do physical work, they are also responsible for household and kids, so they've got double duty to perform. You add a work injury to that and they have a lot of difficulty.

There are immigrants who have poor communication skills. They can't make the change from doing heavy physical work. They don't have the English skills to be able to do that. This legislation is particularly going to affect these people and we're concerned. This legislation is going to affect those people or target those people who are most vulnerable to this type of change.

That vulnerability nowadays is even enhanced by changes in the workplace. Certainly, the economy is changing. There is increasing demand for specific technical skills that these people tend not to have. Also what we're seeing in the workplace is a decreased willingness of employers to accommodate injured workers. They're trying to cut back on their workforce and an injured worker can't do as much. There's a mindset out there that's changing, that says, "I need to get guys to do twice as much as they did so I can maximize my profits," and there's less of an impetus to look after injured workers.

I think you need to understand, and this is what we're concerned about, that there's going to be, and we can see it coming, a significant cost to denying the reality of chronic pain and limiting benefits. People aren't going to go away. Research suggests that such an approach is going to have little or no impact on chronic pain per se. Also, it's not going to have a huge effect on disability claims. For the majority of injured workers and families, it's going to stigmatize them, and it's going to leave some of them destitute. It is certainly going to increase suffering. My biggest concern is that it's going to transfer the problem to the welfare sector or to other jurisdictions. That's a big concern.

In summary, as researchers, as clinicians who treat chronic pain patients, who do research in this area, who are well aware of the literature, our biggest concern is that this literature doesn't appear to be based upon a solid scientific basis. Second of all, we're very concerned that it's probably going to hurt those individuals who can least afford it.

**Mrs Boyd:** Thank you very much for your presentation. It's very helpful to have that clinical perspective, particularly when we were hearing from the representatives of the chamber of commerce that there is a huge difference between clinical pain and compensable pain. It's quite a relief to know that indeed this work is being done and that the reality of chronic pain is recognized by clinically practising people. Very often in these hearings, the sense you get from employers is that this is some kind of myth or paranoid fantasy, as opposed to reality. So it's very helpful to have this evidence there.

Can you tell me clinically: If someone who is experiencing what you have described here in terms of organic chronic pain then goes back to work and attempts to work,



even though that problem has not been resolved, what is the likely result?

**Dr Teasell:** I think the most important thing I should mention is, it's very important that we try to get patients back to work. Patients want to work. Chronic pain patients want to work. They're very unhappy not working.

**Mrs Boyd:** I agree with you absolutely.

**Dr Teasell:** It very much depends on whether they can manage the work and to what extent we can adapt the workplace. If the workplace is adaptable enough and the patient's pain doesn't reach severe enough levels, he or she will successfully return back to work. But in many cases they just can't manage it, because the type of work that tends to injure workers tends to be the type of work that's hardest to do when you have chronic pain. That's just the reality of what we deal with on a day-to-day basis.

**Mrs Boyd:** When we couple the reality of this bill and the people it will target in terms of their vulnerability with some of the other policies that are reducing the possibility for adult students to go back and build some of the skills they haven't had with the kinds of reductions we see in social housing and other areas that can help to support people who are trying to change their way of life and their ability to work, it really magnifies the problem.

**Dr Teasell:** The key to managing chronic pain is adaptability. If you remove the mechanisms by which people can then adapt, retraining programs etc or modifying the workplace, then no, the results aren't going to be as good in terms of getting people back to work.

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**Mr Maves:** If there's evidence that chronic pain has an organic aetiology that's compensable — for instance, carpal tunnel syndrome is something that provides chronic pain but it's proven to have an organic aetiology, so it's still compensable. I just wanted to point that out at the outset.

I wonder if you have any knowledge of the Nova Scotia experience right now?

**Dr Teasell:** What do you mean by the Nova Scotia experience?

**Mr Maves:** With their guidelines for chronic pain —

**Dr Teasell:** Who made their guidelines?

**Mr Maves:** Nova Scotia in concert with the medical community.

**Dr Teasell:** I'm not aware of the Nova Scotia experience.

**Mr Maves:** Okay, thank you. The WCB is currently conducting, with some stakeholder input, a study on chronic pain and chronic pain management. Are you aware of that and participating in that?

**Dr Teasell:** No.

**Mr Maves:** What kind of experience have you had in treating chronic pain? What could you tell me about getting people with chronic pain treated and then perhaps back to work?

**Dr Teasell:** It's probably 75% of my practice, so it's a key component of what I do. My experience with chronic pain patients is that they are very hard to treat, very diffi-

cult to treat, because pain is a very difficult thing to manage and it's very limiting for these individuals. The key for them is that we have to try to get them to adapt to their pain and change. Some of them can't. They just don't have the skills, they don't have the ability, they don't have the education. They're not going to be able to do it. They're not going to be able to get a nice cushy job like mine or yours; they're just not going to get to that level.

The second thing is that sometimes you get great employers who are prepared to make the changes, who are prepared to adapt the workplace, and you're more successful then. Sometimes you get well-educated patients who can move into lighter-duty jobs, and you're more successful then. It very much depends upon so many factors, the disability these people experience, but the basic problem is that they have pain and it limits them.

The thing that I notice most in dealing with my chronic pain patients — and Dr Nielson can talk about it — is that these people aren't happy. They don't have it made. They are very unhappy, very depressed, very anxious, very angry. They're living in poverty. They're having a hard time. Many of them get divorced, their families break apart, their kids have trouble. This is not a pleasant condition. The trouble is that the system doesn't help them that much. It tends oftentimes to add to their woes by denying the reality of what they're experiencing.

**Mr Carroll:** I have a sister who is affected very much with chronic pain, so I understand the issue, but is the workers' compensation system the place to take care of those people?

*Interruption.*

**The Chair:** Order, please.

**Mr Carroll:** You've talked about all the socioeconomic reasons for chronic pain and the —

**Dr Teasell:** No, that's not what I talked about.

**Mr Carroll:** Only once did you mention work.

**Dr Teasell:** The issue is that these people whom I see for workers' compensation are injured on the job, and then all these socioeconomic factors play a role. But if not the Workers' Compensation Board, who is going to help them?

**Mr Carroll:** We're talking about the workers' compensation system here and what should be compensable there. If it's not related to work, do you believe it should be compensable?

**Dr Teasell:** No.

**Mr Patten:** Thank you, Dr Teasell. I found that presentation very helpful. I have two questions. One is whether you might have a comment on the criteria proposed in terms of normal healing time and the eligibility for support, compensation. Second, is it your opinion that we are better and better able to diagnose and analyse and provide data to a system like the compensation board that would enable them to make better judgements about the case at hand and not be so sceptical as perhaps they are now?

**Dr Teasell:** In terms of the healing time, I think it's become increasingly clear to all of us who work in the

area that that is an archaic concept. Even in the United States, the leading pain experts call it archaic. They find it bizarre that people are still talking this language, and I find it very bizarre, actually. That's the reason I bothered coming here. It's odd. It makes no sense to me. It doesn't fit clinical reality.

In terms of how to deal with them, it's tough, because the problem is not chronic pain; the problem is disability. If a guy's got chronic pain and he goes back to work, no one questions him; they don't question his pain. It's legitimized because he went back to work. Let's be straight and upfront: The problem is that of disability. Disability is a complex issue in a changing and complex world and there are many factors that go into it. If we're going to deal effectively with these people, we have to admit it's a complex problem and not go for simplistic answers.

**The Chair:** Thank you very much, gentlemen. We appreciate your bringing your ideas forward to the committee this afternoon.

#### LONDON LABOUR COUNCIL

#### LONDON DISTRICT BUILDING AND CONSTRUCTION TRADES COUNCIL

**The Chair:** I now call upon representatives of the London Labour Council. Welcome. Your 20 minutes allows you either to make a presentation or to allow time for questions.

**Mr Joe Zsoldos:** I am Joe Zsoldos, on behalf of the London Labour Council. We will be sharing our time with Terry O'Neil from the building association. I will start out.

Who are we? We are the London Labour Council, which represents both the private sector and public sector unions in this community and surrounding area.

The London Labour Council represents 23 unions, with 71 local unions, and a membership of 26,000. London Labour Council represents a very wide cross-section of workers who are affected by the changes that will take place under Bill 99. This submission is being submitted on behalf of all the unions and workers represented by the London Labour Council.

It usually is an honour to have an opportunity to appear before a government standing committee to make an important contribution in the decision-making process that affects approximately 10 million workers throughout this province. We do not share that feeling of honour with Bill 99.

What we have is a mockery of Bill 99 hearings by this government. The Harris government is only allowing 117 submissions to be heard in this province. There were 1,300 applications for standing to make submissions before this body. This is the largest request for any bill in the history of this province. It is a mockery of every working person in this province by this government to show so little concern for the working-class people who are affected by the changes in Bill 99. It is also a disgrace that this government only gave London 11 standing, of which

labour received two and injured workers' advocate groups received one.

Our concerns: Bill 99 involves a complete rewrite of the Workers' Compensation Act. This bill affects the entire future of safety, labour relations and the treatment of injured workers on the job.

It was the promise of this government that they would not attack the disabled in this province. Well, what is an injured worker? Is this worker not a disabled worker who has, through an injury, been denied the ability to earn a living? This government sees fit to deny compensation or restrict benefits to such persons.

We have many concerns with all the rewrites in Bill 99, but with the time limits imposed, I will only touch on a few topics.

In workplaces across Ontario the incidence of injury is growing, particularly repetitive strain injuries, occupational stress and occupational disease. This is due to the speed-up and downsizing to become more competitive. Bill 99 dramatically reduces the right to entitlement to benefits for these injuries and reduces the number of claims for other injuries.

Certain injuries will be disqualified from entitlement to compensation. Bill 99 mandates limits on entitlement for chronic pain, leaving the definition of that limitation entirely to regulation.

Compensation for mental stress caused by working conditions or harassment will be prohibited by Bill 99. Injured workers will also be cut off by application of "normal healing times." Under this policy, the board determines the amount of time a worker will require to heal, based on an arbitrary "meat chart." If the worker is not healed in the required time, that worker will be cut off benefits. This is a violation of the fundamental concept written by Justice Meredith, of the Meredith commission, a former leader of the Conservative Party, that injured workers will receive benefits because of their injuries.

The Meredith commission established:

Employer-funded collective liability, where the vast majority of employers will have to contribute to a liability fund from which benefits would be paid.

A no-fault system: It will not be necessary to prove negligence on the part of the employer in order to receive benefits. Negligence on the part of the worker will not prevent workers from receiving benefits.

Security of benefits: Rejecting employer arguments regarding time limits, Meredith stated, "Compensation should be paid as long as the disability lasts, and the amount of compensation should relate to the earning power of that worker." That comes from the commission's response.

Administration by an independent agency: This was the beginning of the Workers' Compensation Board. A compensation law should render it impossible for a wealthy employer to harass an employee by compelling a worker to litigate their claim in a court of law.

Removal of litigation rights: To receive workers' compensation workers gave up the right to sue their employer.



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With Bill 99, the Ontario government has attacked the principles of this commission. Under Bill 99, we are seeing an attack on the benefits for injured workers: a cut in benefits from 90% to 85% of net pay and handing rebates of 5% back to the employer on the backs of injured workers, who are actually disabled workers; the revised cost-of-living formula, which is half the consumer price index minus 1% to a maximum of 4%, further penalizing workers with permanent injuries. This cost of living will cut \$9.3 billion from workers' income over the next 17 years.

In Bill 99, other changes threaten the earnings of injured workers, the basis on which the workers' 85% is calculated. The sections dealing with earnings are written very loosely. Earnings can be reduced by such factors as periods of layoff in the previous year. It also threatens workers who may have been off work in the previous year due to illness.

Bill 99 can effectively cut off workers' compensation benefits by deeming the worker able to earn a wage in suitable employment, which means the worker does not actually have an alternative job.

A worker can be deemed at any time after an injury, and it is not necessary that the deemed employment be available. If "deemed" is applied, the worker is then paid 85% of the difference of the injured worker's net average wage before the injury and the wage that injured worker is deemed to be able to earn. Example: If a worker earns \$20 per hour before an injury and is deemed to be able to earn \$12 per hour, that injured worker will receive 85% of \$8 an hour.

Injured workers' benefits are effectively cut under Bill 99. This approach will affect workers with both short- and long-term injuries. This provision under Bill 99 will be used to cut workers with chronic pain and repetitive strain injuries.

Under Bill 99, workers must file their own claims. Under the old act, the doctor would file the claim. Workers will also have to provide the claim to their employer. This is the first of many steps built into Bill 99 to intimidate and influence workers' decisions not to file for compensation. The workers must authorize the release of their medical information to the employer. If the injured worker should refuse to release this information, the injured worker's benefits will be cut off.

The employer will be in constant communication under law with a worker who has filed a claim. This is to mean the employer's involvement in an early return to work. It will mean just that, but not for a safe and healthy return to work for the worker. If the injured worker fails to cooperate, this means the injured worker will be cut off benefits.

The employer, not the board, is responsible for the injured worker's return to work. The board has no responsibility to monitor the progress of the return-to-work plan; nor does it have to make any determination as to what work is suitable and consistent with the worker's functional ability.

If the employer decides not to cooperate in returning the worker to a job, under Bill 99 the employer has no penalties. The Board can simply place the worker on a labour market re-entry. This leaves the injured worker in search of another job with another employer, with no guarantee of a job.

Vocational rehabilitation also does not appear in Bill 99, thus eliminating rehabilitation for an injured worker. This eliminates the injured worker from returning to an equal or better position than the injured worker had pre-accident.

Bill 99 no longer defines the goal as restoring the worker's pre-injury earning capacity, but rather "when possible" restoring the worker's pre-injury earnings.

Bill 99 requires only that "a labour market re-entry plan determine the suitable employment or business for the worker." The board, or whichever private agency is developing the labour market re-entry plan, need only "deem" a worker to have a suitable job. Under Bill 99 it is no longer necessary that a job be available to that worker. After a minimal amount of job search training, the worker will be deemed to have a job and will be left to fend for himself or herself.

This is in direct violation of the Meredith commission, which firmly established that workers have a right to compensation for any injury at work and that employers have a responsibility to compensate workers injured in their employment. I ask, is Bill 99 not giving power to employers to play God with the wellbeing of workers and a way for employers to not accept the responsibility to provide a safe and healthy workplace?

Bill 99 has only two objectives: to cut workers benefits and to reduce employers' cost and liability for those workers injured and/or killed on the job.

In conclusion, the London Labour Council sees many dangerous aspects in Bill 99 which reflect employers' demands and which we have concern with:

- (1) Reducing by 75% the inflation protection of unemployed workers with disabilities.
- (2) Forcing workers to undergo risky operations or take drugs which they might prefer to avoid because it is cheaper than treatment recommended by their physician.
- (3) Privatizing vocational rehabilitation so that making a profit from a worker's injury becomes a higher priority than the worker's wellbeing.
- (4) Cutting future disabled workers' pensions in half when the government knows that most injured workers have no employers' pension plans.
- (5) Cutting benefits from 90% to 85% of net pay to get tough with worker legislation and rebates of 5% to employers, which is get-soft legislation for employers.
- (6) Setting arbitrary time limits for injuries, disabilities, chronic pain and stress.
- (7) Eliminating the independent appeals system and WCAT decision-making being brought under the control of an employer representative appointed by this government.

(8) Deeming workers to be able to obtain jobs which are not available and then setting their benefit levels under the pretence that a job is available.

The London Labour Council with its affiliates has only one recommendation to this standing committee: that the standing committee vigorously oppose Bill 99 and recommend that the Harris Conservative government rescind Bill 99.

**Mr Terry O'Neil:** My name is Terry O'Neil. I'm business manager of the London District Building and Construction Trades Council. As such, I represent the 6,000-odd highly skilled men and women in the construction industry within the five-county immediate area.

I had originally thought of beginning my presentation by taking a look at some of the mythologies that surround the Workers' Compensation Board, its funding, its operations and its usefulness within our industrial society, but I imagine you've already been bombarded with enough of that today and on previous occasions, so I will skip over that.

That being the case, I would like to answer the proposed legislation in the most positive and constructive manner possible and from an all-too-often-ignored point of view, that of the construction industry.

Whether or not the sharp pencils and bottom-line baskers are prepared to accept or even recognize it as an immutable truth, the health of our industrial, institutional and commercial construction sectors and the health of our trades workforce are joined at the hip. It therefore stands to reason that our collective energies should be directed towards providing the healthiest of workforces, capable of supplying their finely honed skills and talents in an environment of trust and understanding rather than treating them with suspicion, subjecting them to punitive roadblocks and attempting to return them to the workplace before they are truly ready.

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You wouldn't treat your car this way, you wouldn't treat your colleagues this way and you certainly wouldn't treat your family members this way. It must be remembered that any enlightened businessperson will tell you that while items of machinery may perform according to established business formulae, workforces don't, and that's because they're comprised of individuals whose value must be recognized, whose creativity and inventiveness must be encouraged and whose ability to perform to their highest level of proficiency must be protected and encouraged.

There is no doubt that workers' compensation reform is necessary to ensure fair compensation for injured workers today and into the 21st century. Increased workplace safety and more effective rehabilitation and back-to-work measures are in everybody's interest. That's everybody's: workers, employers and all taxpayers. Compensation dollars should go to injured workers, not administrative structures, consultants, private insurers and lawyers. All employers should be treated equally. Injuries and indus-

trial diseases of the technological age, such as chronic stress, need to be better understood.

All workers' compensation reforms need to consider the unique circumstances of the construction industry, where soft tissue injuries account for over two thirds of all work-related injuries and rehabilitation efforts have been woefully inadequate in the past. If the government is serious about addressing workplace safety, lost productivity due to workplace accidents and ineffective rehabilitation, the construction industry is the place to start.

It was certainly surprising that such a reputedly astute observer as Cam Jackson in his discussion paper made no mention whatsoever of construction and that many of the changes considered in that document are irrelevant to the 251,000 unionized construction workers for whom workers' compensation is literally and figuratively a life and death issue. This is not the common sense of which you so often and so proudly speak.

It is our fervent hope that the current government will not repeat or continue the oversights of the past and of past governments, that it will recognize the often-understated value of the construction industry and that it will both acknowledge and attempt to understand the uniqueness of our industry.

It is in this light and in the spirit of the judicious and well-reasoned protection of such a valuable workforce, that we offer the following recommendations:

(1) Launch a comprehensive study of soft tissue injuries in the workplace, including prevention and rehabilitation, prior to introducing any legislative amendments. Focal points of such a study must include the construction industry.

(2) Reaffirm the principle that each case be determined on an individual basis. Whether disabilities such as chronic stress should be compensable depends on the individual worker's circumstances and, in the absence of updated medical knowledge, should not be a matter of general policy imposed by Queen's Park. Legislated health is an oxymoron.

(3) Retain the WCAT in its present form with adequate funding to perform its function efficiently.

(4) Retain the offices of the worker and employer advisers.

(5) Immediately reassure the thousands of recipients of permanent disability pensions that the financial woes of the WCB, however mythological, will not be solved at their expense and that their pensions will not be reduced.

(6) Study the human and financial costs prior to commutation of pensions being adopted as board policy. Commutation must not be viewed in isolation from or as an alternative to rehabilitation.

(7) An industry standard for the calculation of earnings basis should be developed that considers the class and character of the work, particularly in industries characterized by seasonal or cyclical work.

(8) Decision points for future economic loss awards should be related to an individual worker's rehabilitation plan, not be subject to arbitrary time limits.



(9) Develop obligation to re-employ measures, following consultation with the construction industry, consistent with the principle that construction employers have a collective responsibility to restore injured construction workers to productive employment.

(10) Recognize the distinctiveness of the construction industry in the design of employer incentives to accommodate or provide light or modified work and institute a definition of "sustainable employment" that is suitable to a project-oriented cyclical industry. Again, consultation is necessary.

(11) Retain the Workers' Compensation Board as the most efficient provider of coordinated vocational rehabilitation services.

(12) Extend workers' compensation coverage to all employers in Ontario.

(13) Work with the appropriate federal and provincial agencies to give the WCB greater priority in distribution of assets when employers dissolve or become bankrupt.

A great deal more study and sincere, well-informed, in-depth consultations are required before the government should even consider amendments to this legislation. The construction industry, since it represents 5.2% of the total provincial employment, second only to retail, not only has a right but a responsibility to be energetically and constructively involved in that process.

We are holding out a skilled and productively talented helping hand. Now let's get to work, together.

**The Chair:** Gentlemen, thank you for your thorough and thoughtful comments on the bill today. We appreciate your taking the time to come before this afternoon. Unfortunately, there isn't time for questions.

#### REGISTERED NURSES ASSOCIATION OF ONTARIO

**The Chair:** Colleagues, I would like to now call upon representatives from the Registered Nurses Association, please. Good afternoon. Welcome.

**Ms Jacqueline Choiniere:** My name is Jacqueline Choiniere. I'm the director of policy for the Registered Nurses Association of Ontario. I would like also to introduce Jan Kainer, who's a policy analyst; Kelly Waddingham, our legal counsel; and Glenda Hayward, who is one of our chapter presidents from the London area.

First to tell you a bit about RNAO. The RNAO is the professional organization for approximately 13,500 registered nurses who work throughout the health care system, and we are very pleased to be here today to have the opportunity to comment on this very important legislative initiative.

We have a number of issues with the current legislation which are outlined much more fully in the brief, the submission that has been circulated to you. However, because of time constraints, we will concentrate on two major issues arising from this legislation that we particularly want to draw your attention to.

The first concerns the impact of the bill on nurses who are having to work in an increasingly stress-induced environment, which is the consequence of financial constraint, restraint and restructuring. At a time when nurses are experiencing high levels of stress, they will have reduced access to compensation benefits when they most need them. We are concerned about how nurses will be affected as users of this compensation system.

The second issue we will be discussing is the role nurses are assigned within the administration of the compensation system itself, specifically, that nurses are being recruited to act as case managers in the processing of claims. One of our concerns here is that the proposed legislation, at least certain components of the bill, may prevent nurses from performing their professional responsibilities fully.

Now I'd like to expand on both of these points a little more.

For the first one, nurses are users of the compensation system. In the current context nurses are confronting an uncertain work environment. Stress-inducing factors such as workplace reorganizing, increased work load, understaffing and job insecurity are commonplace throughout the health care sector.

In this environment of restructuring, we are witnessing health care providers who are increasingly exposed to high health risk situations. It is well documented that high stress environments increase people's vulnerability to injury. In the hospital sector, for example, nurses are experiencing work intensification as hospitals re-organize their operations, increasing the volume of patients and improving efficiencies. People are much sicker.

Patient security is progressively increasing as length of stay in hospitals decreases. These workplace changes are putting tremendous physical and mental strain on nurses. Registered nurses are particularly at risk of stress as fewer of them are available to attend to patient needs or to supervise other providers. Budget cuts have compelled hospital administrators to reduce staff levels, one of the major complaints commonly heard by our members, and we hear by our members, is the problem of understaffing.

Understaffing can result in nurses having to work alone without the benefit of assistance from others, particularly problematic when work with critically ill or difficult patient-clients, and if this situation puts the nurse at a much higher risk of injury. Indeed, data from the Workers' Compensation Board on the number of injuries in nursing occupations by source of injury indicate that the largest category of injury is related to "persons," that is, the largest number of injuries reported are related to activities such as moving and lifting patients or from patient assault.

Understaffing of health care personnel also means that nurses are less likely to receive sufficient breaks during their shifts, and without adequate staffing nurses feel it's not possible to take a break without compromising quality patient care. A nurse who is responsible, for example, when overseeing the smooth operation of a unit, may just never risk leaving it if it's a particularly busy time.

When nurses are working a 12-hour shift, the absence of breaks over a prolonged period time may lead to leg, foot and back injuries due to the long periods of standing and walking. Recent research indicates that nurses are put at greater risk of injuries when hospitals are understaffed. A landmark study in the US analyses work-related injury in a time of hospital reorganization and concludes that restructuring in hospitals increases back, neck and shoulder injuries for nurses.

Another ongoing trend occurring in hospitals that can incur health risks to nurses is the implementation of multi-skilling or cross-training, which requires nurses to practise what is already a broad range of skills but over a much broader space or type of patient or type of unit. The RN in this instance practises in more than one area or speciality, and this means, as a result of merging, that our nurses must work intensively, covering a larger number of patients using a diverse range of skills, cover a much larger physical space, and problems such as tendonitis have appeared, which is a result of walking over a much larger space in a much shorter time period. Again, data from the Ontario Workers' Compensation Board show that a higher percentage of injuries in nursing occupations is associated with running, walking and climbing.

#### 1650

The proposed six-month time limitation in which to file a claim will preclude the nurse from being able to make a claim who has symptoms of tendonitis or back injury that appear, for example, in month 7. In other words, registered nurses will be significantly disadvantaged because the reality of nursing injuries does not fit this very narrow and restrictive old.

The RNAO has much more to say and certainly more data to share about the chronic pain issue and we would like the committee to know that we will be submitting a separate response before the August 25 deadline to these issues.

In addition to physical strength, nurses are experiencing greater mental stress because of the increased pressures and demands from the workplace. Nursing has long been identified as a high-risk occupation. However, the occupational stressors in nursing are exacerbated in this period of restructuring and budget cuts.

Today increased workload, chronic short staffing, workplace reorganization, multitasking and insecurity of employment are just some of the stress-inducing factors that nurses confront on a continual basis. Our office has received calls from more and more members who are experiencing these problems due to the reality of the current workplace.

Many of us who have encountered an emergency room lately can attest to the incredible stress and pressure that nurses encounter for hours on end. In spite of this reality, nurses, indeed any worker, will not be compensated for this intensive stress because it does not fit the following acceptable definition, and I'm quoting here, section 12, sub (5) of the proposed bill that states: "an acute reaction to a sudden and unexpected traumatic event arising in the

course of...employment." In effect, the relentless ongoing stresses and trauma of the current health care restructuring scene will not qualify.

The proposed bill clearly states, again section 12, sub (5), that there will be no benefits for mental stress caused by an employer's decision or actions related to employment, including the decision to change the work to be performed or the working conditions. We're very concerned that this will place our members in an impossible situation.

As restructuring proceeds, nurses have to have access to fair and appropriate compensation benefits and to a rehabilitative system that offers support for the injured to return to work. Legislation must be maintained that recognizes occupational stress and that provides income support for employees who have incurred both psychological and physical injuries at the workplace.

The other major dimension of the proposed changes we're concerned about relates to the administration of the workers' compensation claim. We understand the WCB is implementing a new service delivery model and that nurses will be assigned as case managers to administer claims. The implications of this are both positive and negative for nurses. On one hand, we fully agree that nurses should be case managers, as they have the knowledge base about health, health problems and appropriate treatments that will enable them to effectively operate within the compensation system. On the other hand, nurses will be required to make decisions in accordance with the proposed legislation that could seriously compromise the quality of care for injured workers.

We're referring here to subsection 33(2), which states that the board "may provide a special surgical operation or special medical treatment...if, in the opinion of the board, doing so is the only means of avoiding substantial payments under the insurance plan." It will be extremely difficult, if not impossible, for nurses to work under legislation which ultimately requires them to make decisions about appropriate treatment solely on the basis of monetary considerations rather than principles of sound practice. In fact, doing so is contradictory to the nurse's accountability regarding professional practice.

Another clause in the legislation that concerns us is subsection 33(8), which states that the board "shall determine all questions concerning...the necessity, appropriateness and sufficiency of health care provided to a worker." What is considered necessary health care will be controversial if compensation payments are the primary consideration. RNAO therefore recommends deleting subsections 33(2) and 33(8) of the bill.

Under the proposed legislation, the nurse case manager is required to facilitate an injured worker's early and safe return to work, but the labour market re-entry plan as defined by the bill does not guarantee an injured worker access to training or to a job re-entry plan. The nurse case manager will also be required to make decisions in regard to adjudicating claims on a three-person team, including herself or himself, a WCB adjudicator and an employer



representative. Within this team approach, the nurse case manager may find himself or herself at a disadvantage relative to the other team members who might be focused instead on a quick return-to-work strategy to avoid WCB payments rather than on quality-of-life and health issues. However, the nurse case manager will not have the legislative mandate to effectively argue and carry out the rehabilitative strategy.

In conclusion, RNAO is very concerned that the proposed changes to the workers' compensation system will have a very deleterious effect on registered nurses. RNs are particularly vulnerable now to mental and physical injuries, given the range and pace of health care restructuring. This is not the time to restrict entitlements.

In addition, while we applaud the utilization of RNs as case managers in processing these claims, we also strongly urge the government to ensure that these very valuable professionals be allowed to practise in accordance with their professional standards and responsibilities.

We thank you for the opportunity to present our views to the standing committee and urge your support for our recommendations.

**Mr Maves:** Thank you very much for your presentation. It covered a lot of topics, and I guess I'll just talk about one. It may not be a fair comparison, but I think it goes to the heart of the idea of compensating for chronic stress. In your workplace, if you have restructuring at the hospital you're working at and as a result you are required to now become responsible for some additional patients each shift, what I'm reading is you're saying that adds stress to your job because you're responsible for more people and it should be something that's compensable if you decide to file a claim.

What I'm worried about is the Pandora's box you might open at that instance. Mr Carroll used to sell cars. If he could say to his staff, "You used to have to sell six cars a month and now you've got to sell 10," someone could say: "That's adding a lot of stress. It's extra performance. I'm going off on a claim." I'm not trying to diminish. I'm trying to show you where I think a lot of people are really nervous about the idea of compensating for chronic stress.

**Ms Choiniere:** I suggest, though, that I think a worse scenario for our members would be not being able to receive compensation if something did happen in that situation. I'll turn this over to one of my other colleagues.

**Dr Jan Kainer:** I don't think you understand what we were trying to say. We're talking about multiskilling, changes that are being made at the hospital level in which nurses have to cover more physical ground. That means more walking. There are more patients the nurse has to care for, which makes her job more intensive, much more work. It isn't a question that we think nurses should be compensated for having more patients; it's more that the context of the work has changed. It's much more intense now for workers. They're more vulnerable to injury as a result of a changing workplace.

**Mr Maves:** I understand that, but as it relates to chronic mental stress, it appears that because of what you've just told me, that should be something for which you could file a claim for compensation.

**Dr Kainer:** No. I think that's a different issue. We're talking about mental stress. Mental stress is not clearly in the legislation, and what is defined is that it's only under certain conditions that you can file a claim for mental stress. We're saying that mental stress is endemic to some units in the hospital sector, for example, working in emergency, and that nurses should have the right to make a claim for mental stress in that particular instance.

**Mr Maves:** Are you aware of the OMA's position on chronic mental stress?

**Dr Kainer:** No.

**Mr Maves:** They don't think it should be compensable, but I wondered if you knew about it.

**Mr Patten:** Thank you for your presentation. In my previous incarnation, I worked in the health field at a hospital, and so I have great appreciation for your profession. I know that there is increased pressure from all sides to do more, to learn more and to be expected to always come through with shining colours, a smiling face and tremendous demureness as you deal with a variety of issues.

On the section on mental stress, I don't know if you heard the doctors who were here a little earlier, but they were quite good on illustrating the clinical basis of chronic pain and under the area of mental stress, many of the community legal clinics have said that if there wasn't a recognition of the legitimacy of that, it would be akin to discrimination of recognizing something with legitimacy which is documented and can be put forward and that it would probably be contested on the basis of our human rights charter. Do you have a feel for that area as you talk about this area? I know this area is a big issue for your profession.

**Ms Kelly Waddingham:** I would assume that probably the people from the legal aid clinics were referring to a case that was before the Supreme Court of Canada a couple of years ago, and it was differentiating between discrimination that was based on people who were suffering from psychiatric problems as opposed to people who were suffering from physical disabilities.

The Supreme Court held that it was unconstitutional to differentiate between the two, and our position would be the same. Right now, as the proposed bill stands, there is no compensation unless you fit a very narrow definition. We believe that (a) it's wrong not to have compensation for mental stress, and (b) that very narrow definition is just bad. Within our submissions we talked about the fact that for an emergency nurse, for instance, who works in emergency, what is a traumatic event? It becomes very difficult to measure that.

**1700**

**Mr Patten:** I was just going to get to that point. I agree with that. How can you differentiate from one event and which one it was, because in a hospital there are so many

events that are traumatic. How can you differentiate a series of what I might call traumatic, over time, for highly specialized RNs? It wears you down.

**Ms Waddingham:** Right. It's a cumulative effect. So in effect, after a while someone eventually says, "I can't take this amount of stress any more."

**Mr Patten:** I know in intensive care at the Children's Hospital where I worked they would rotate nurses after a while because it was such a traumatic experience for them over a period of time, seeing the loss of children and dealing with parents and this sort thing, that they just had to shift them to other wards within the hospital for a while.

**Ms Waddingham:** What's important to remember is that stress is very individualized, so the question we had over here, if you increase someone's workload, does that mean they automatically get compensation? I don't think the RNAO would agree with that at all, but we want a recognition that as there are more demands on RNs working in a ward, some individuals will succumb to that cumulative stress and it will mean that they should have some entitlement to workers' comp, we believe.

**Mr Patten:** Talking about stress, I'm sure Bill 136 will add to that as well.

**Ms Waddingham:** That's correct.

**Mrs Boyd:** Thank you very much for coming and for presenting. We were very pleased to see the RNAO on the list of presenters and very pleased that you got an opportunity to talk about some of these issues. Very often people forget that professional people are often exposed to workplace injury and disease in a very real way. So it's very helpful to have input from professionals.

One of the things that struck me in your presentation where you were talking about stress, and I may have just missed it, is that the restructuring is also causing your patients to be sicker. Because they're leaving hospital sooner and not coming into hospital early, every patient you have is very ill in a way that wasn't true 10 years ago, where people would come in the day before surgery and there would be a preparatory period and they would stay for longer afterwards.

When we talk about accumulated stress, we're talking about more patients but we're also talking about sicker patients and we're also talking about professionals who are constantly under scrutiny in terms of their professional practice. You are professionally liable in terms of your practice.

It is nothing like selling cars, Mr Maves. How you could even make that comparison is beyond me. We are talking about people who are providing human services in an increasingly technological way so they need to increase those skills all the time. Patients are sicker, there are more of them for each professional to look after and what we are really looking at is a situation where a series of traumas build up in a very different way than they would in the car salesman business, or even in many of the blue-collar areas, where stress is also high for other reasons. Productivity stress, so many widgets per minute and that sort of thing can be very stressful. We all have seen that

sort of thing. I think it really did disservice to the professional nature of your work.

**Ms Choiniere:** The only thing I would add to that is that restructuring, unfortunately, reduces the options for the nurse to get away from it, to find an alternative venue, to seek that relief. We can't underestimate the cumulative effect that has.

**Mrs Boyd:** I would agree, and Mr Patten's comment about the rotation of nurses from one service to another may have worked in a day when all those services were not subject to the same kind of stress.

I'm really concerned about the point you raised about professional capacity in terms of the suggestion that you be case managers. I don't think that has been looked into clearly in terms of your ethical obligations and what is anticipated here in terms of cost control. That's a very good point. Thank you for bringing it forward.

**The Chair:** That concludes the presentation time. On behalf of the members of the committee, I thank you for bringing your brief before us today.

#### BREWERY, GENERAL AND PROFESSIONAL WORKERS' UNION

**The Chair:** We'd now like to hear from representatives from the Brewery, General and Professional Workers' Union, please. Welcome, sir. Please introduce yourself.

**Mr George Redmond:** My name is George Redmond. I'm the business agent for the Brewery, General and Professional Workers' Union. We represent over 5,000 workers in Ontario in a multitude of different industries and offices.

I'd like to thank the committee for the opportunity to present the viewpoint of the Brewery, General and Professional Workers' Union and highlight what we feel will be some of the significantly negative impacts the changes in Bill 99 will have upon our injured members and their families as well as all workers who will be injured and their families.

I would be remiss if I did not point out as well that with the limited amount of time the government has scheduled to hear briefs, a very small portion of those who requested an opportunity to appear before you to express their concerns will be heard. It's clear that the government has a cavalier attitude towards the public and the impact these changes will have on hundreds of thousands of working people and their families in Ontario.

The list of problems with Bill 99 are numerous, and although not an exhaustive list, includes:

- Unclear and vague language in the act;

- Reduction of benefit levels from 90% of net average earnings to 85%;

- Deindexing of pensions and benefits;

- Intimidation and coercion of injured workers by requiring them to file claims where there may be language and literacy issues;



Dismantling of the independent Occupational Disease Panel;

More reliance on experience rating, making non-reporting and underreporting of workplace injuries profitable;

Weakening return-to-work requirements and development of labour market re-entry plans with the possibility of little or no injured worker input or treating physician input;

No requirement to have available and suitable work at the end of those plans;

Release of confidential medical information without appropriate safeguards;

The gutting of WCAT by destroying its independence by requiring them to follow board policy instead of law;

Further limiting WCAT independence by moving to a single vice-chair, thereby allowing a singular political appointee;

Appointments being made with no labour or injured worker input.

Arbitrary time limits for appeals, both at the board and WCAT.

Limiting time for reporting of injuries and disease at risk of losing benefits;

Reducing budgets for legislated obligations like the OWA, WCAT, the Occupational Disease Panel and occupational health and safety initiatives like the Workplace Health and Safety Agency and the Workers' Health and Safety Centre;

Privatization of rehab services and reduction of voc rehab case workers at the board;

Downsizing and limiting access to workplace analysts and ergonomic specialists at the board;

Introducing material change with no policy or regulation in place, leaving injured workers with little if any understanding of how or what may reduce or cut off their benefits for not cooperating;

Limiting opportunities for chronic pain to usual healing times. The entire issue with chronic pain is that it goes beyond usual or normal healing times. I think the presenters earlier made that point quite clearly;

Making it more difficult, if not impossible, to claim benefits for repetitive strain injuries and work-related stress;

Elevation of policy above the letter of the law, thereby impeding natural justice and the right to appeal;

Making the board responsible for medical treatment, as opposed to the injured worker, in consultation with their doctor of choice;

Reduction of assessment levels at the expense of injured workers or their survivors' benefits;

Reduction of retirement benefits from 10% to 5%;

Before addressing some areas of concern that I've raised, I'd like to comment on the foundation that Bill 99 was built upon;

In the Cam Jackson report, which was issued prior to the introduction of Bill 99, he states in the executive summary: "These reforms will allow the government to re-

move significant barriers to job creation and economic competitiveness by keeping its commitment to lower WCB assessment rates." Prior to introducing Bill 99, the Minister of Labour, Elizabeth Witmer, stated in the House that the changes to be introduced later today "provide a balanced approach to reform by preserving fair and secure benefits for injured workers while at the same time restoring financial viability to the Workers' Compensation Board."

These statements suggest that current assessment rates in Ontario are higher than in other comparable jurisdictions and impede competitiveness, require lowering and that there's a crisis at the board with the unfunded liability. The government and employers have alluded to this unfunded liability as putting Ontario in a negative competitive position for employers, and that the public is on the hook for the cost. This is clearly not the case. The unfunded liability lies solely with employers in Ontario.

This unfunded liability did not come about on its own. It has grown bigger over the last 15 years and the board has developed at least two separate funding strategies over that time to retire the unfunded liability. Each time employers have been successful at keeping rate increases below what those strategies have suggested. They have dodged suggested increase assessments by using employer representatives on the board of directors of the Workers' Compensation Board to keep suggested rate increases down for at least a decade.

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It's curious that they're not nearly as concerned with pension fund unfunded liabilities and see nothing wrong with paying them off over 10 or 15 years. The general public has unfunded liabilities with their home mortgages. They don't seem to be in crisis, nor the banks that carry those mortgages, yet their personal unfunded liabilities are paid down over a 20- or 25-year period.

To understand what employers have done to create this unfunded liability at the board, I'd like to draw a simple analogy. If I were to look at my mortgage for my home as part of my personal unfunded liability and my mortgage payments were \$800 a month and I chose to pay only \$500 a month, provided my mortgage company allowed me to do that, would I be surprised that after five years I owed more than what I started with? I think not, yet the employers and the government are surprised. I see this as a concerted effort to create a non-existent crisis.

In their fight to reduce assessment rates, employers have suggested that the average assessment rate in Ontario of \$3 per \$100 of payroll is too high and should be reduced. In a study produced by the Bureau of Labor Statistics in the United States, the average WCB assessment is 70 cents per hour or 4.1% of an average blue-collar worker's average total compensation of \$17.28 per hour. That amount comes to \$4.05 per \$100 of total compensation US funds, or US\$4.05 times C\$1.38, \$5.59 per \$100 of payroll.

Looking at another study conducted by KPMG Management Consultants in 1995, titled A Comparison Of

Business Costs in Canada and the United States, they have looked at labour wage rates, statutory benefits and taxes in a number of cities and representative industries throughout Canada and the United States. In both Ontario sites, London and Ottawa, workers' compensation costs were significantly cheaper than in all seven similar cities and industries in seven separate states in the United States.

In general the KPMG study shows, "While the 1994 results showed Canadian jurisdictions to be cost-competitive, the results for 1995 show significant cost advantage for Canadian locations." In the House, Minister Witmer suggested that this KPMG study was a selective survey, yet the study looked at similar industries in Canada and the United States in cities of similar demographics. I would like to ask the government: If these are selective studies, where are the empirical data the government relied upon in developing Bill 99? I would suggest it was built upon a general shopping list to reduce employer costs and increase their profits, not to provide fair compensation and prevent injuries.

When we turn to the issue of benefit rates, employers have said that injured workers are overcompensated at 90% of net earnings. During the time leading up to Bill 165, a bill to amend the Workers' Compensation Act, I had the opportunity to participate in one of the task forces for the Premier's Labour-Management Advisory Committee regarding workers' compensation. Our task at the time was to come up with a base scenario to see what kind of financial impact other changes would have on the workers' compensation funding strategy.

At that time the employers' representative on the committee, Ted Nixon from Mercer consulting, raised the issue of overcompensation, and other employer groups have raised that same issue here today. When I asked the board to provide examples, or Mr Nixon, the employer rep on the subcommittee, he indicated that it was an employer perception and that there were no concrete numbers; this was a perception they relied on, that people were being paid too much. This perception made it into the employers' recommendation to the House, brought forward by the third party of the day, the Conservatives, and subsequently into the Cam Jackson report to amend the Workers' Compensation Act when the Conservatives came into power.

Someone recently said to me that perception is everything. I suppose they were right. Bill 99 recommends reducing benefit levels to 85% of net earnings on a perception, not empirical data. If the unfunded liability, cost competitiveness and overcompensation are the underpinning of Bill 99, and this premise is built on quicksand, why the urgent need to introduce such massive change to the Ontario's Workers' Compensation Act? The answer is clear: This Conservative government has a promise to keep to their employer friends no matter how ill founded their reasons are and they intend to follow through regardless of the facts.

I'd just like to ask a question: What time did I start at, seeing the other people went over a little bit?

**The Chair:** You started at 5:05; you've finished 11 minutes of your time.

**Mr Redmond:** I just want to make sure I cover some specific areas of this representation.

Section 1 of the Workplace Safety and Insurance Act amends the previous concept of fair compensation and rehabilitation services and substitutes instead, under paragraph 3 of section 1: "To provide compensation and other benefits to those workers and to the spouses and dependants of deceased workers."

We would suggest that the words "fair compensation," as stated by Minister Witmer in the House prior to the introduction of Bill 99, and "to provide rehabilitation and programs to facilitate the worker's return to work," be reintroduced into the act to ensure there is not a future erosion of benefits, as well as returning to 90% of net earnings. Rehabilitation is fundamental to injured workers in returning to pre-accident earning levels.

We would further recommend that the government not reduce assessment rates for employers. If their intent is to retire the unfunded liability and the board is in crisis because of the unfunded liability, why give their business friends a \$6-billion gift? We keep hearing that the government's job creation and the economy are improving. If that's the case, current assessment rate levels are not impeding competitiveness, nor growth, and should remain at current levels.

Bill 99 purports to change the intention of the act from one of compensation to focus on health and safety and prevention. Yet in the time leading up to the introduction of Bill 99, the government has dismantled the Workplace Health and Safety Agency and reduced the budget of the health and safety division of the labour ministry by 25%. They are also internalizing the Occupational Disease Panel. The board of directors of the Workplace Safety and Insurance Act, which is employer controlled, will decide what workplace studies to undertake to determine relatedness of exposure and occupational disease.

The bipartite board from the Workplace Health and Safety Agency is gone, so health and safety programs and training will be entirely employer controlled, and the delivery agency of choice of workers, the Workplace Health and Safety Centre, may be incorporated into one of the employer-controlled delivery organizations, controlled by employers again.

If the government's intent was to level the playing field for employers, I would hate to see what you might do if you intended to give employers the upper hand in areas of workplace health and safety, prevention and workers' compensation. If we remove research by internalizing the ODP, minimize and control the training by closing the agency and amalgamating the Workplace Health and Safety Centre, then the problem won't exist, or at least we, the workers, won't notice it.

I'd like to flip through this to go to some of the recommendations on return to work. I've listed a fair bit between pages 7 and 9 about some of the concerns, but to ensure we get them in I want to talk about the recommen-



datations on page 10. But I want to cover one other thing on return to work.

In a study titled *Post-Injury Employment Patterns in Ontario*, prepared for *Challenges to Workers' Compensation in Canada*, School of Industrial Relations, Queens University, April 30, 1993, they looked at 11,000 workers in Ontario who were permanently and partially impaired. It was conducted on injured workers between 1974 and 1987 so the researchers could follow the return-to-work probabilities for at least three years. They state, "Our results imply that employers are more likely to provide job accommodation to union members than to unorganized workers, therefore improving unionized workers' probabilities of retaining post-injury jobs." The study also indicates that older workers, women and less educated workers are more likely to follow employment patterns that end in premature withdrawal from the labour force.

I think it's clear that this legislation that is in place, even when we introduced the NEL and FEL system, is still not addressing the concerns of some of those disadvantaged groups. The recommendations that Bill 99 has go a long way to making that even more difficult by introducing the two-tier possible return to work with the pre-accident employer or labour market re-entry plan. I want to talk about the recommendations specifically and about the changes we'd like to see to the sections of the act that impact returning to work.

First, section 21(1): "A worker or the worker's treating health professional shall file a claim as soon as possible after the accident that gives rise to the claim, but in no case shall he or she file a claim more than six months after the worker learns that the injury arose out of the worker's employment or, in the case of the occupational disease, after the worker learns that he or she suffers from the disease."

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Again, we want to return to where the physician can initiate the claim so that injured workers who are disadvantaged because of literacy skills, English as a second language or have limited education will have an opportunity to ensure that they get their claim filed in a timely fashion.

"Survivor

"(2) A survivor who is entitled to benefits as a result of the death of a worker shall file a claim as soon as possible after the worker's death, but in no case shall he or she file a claim more than six months after it has been determined that the worker's death arose out of the worker's employment."

"Consent re functional abilities

"(5) If an employer operates a return-to-work program which has been accredited by the board under subsection 82(4), a worker must consent to the disclosure to his or her employer of information provided by a health professional under subsection 37(3) concerning the worker's functional abilities, when filing a claim. This disclosure is for the sole purpose of facilitating the worker's return to work."

This is fundamental to make sure that these programs are accredited prior to the release of this information. If there isn't an accreditation of any sort of return-to-work program — the language in 40(1)(b) talks about "attempting to" and "may" and doing a bunch of things like that. As you noticed, when the London Home Builders' Association presented they talked about how maybe we should get exemptions for smaller ones because they have difficulty in doing this. If you don't have an accredited program in place first, they're not going to get back to work. That's going to defeat the entire purpose of your suggested changes.

"Notice to employer

"(7) The claimant shall give a copy of his or her claim to the worker's employer at the time the claim is given to the board and the employer shall give a copy of the employer's report of the accident to the claimant or the claimant's representative at the time the report is given to the board."

We'd like to see subsection 32(2) deleted and section 34 deleted.

"Employer request for health examination

"36(1) Upon the request of his or her employer, a worker who claims benefits under the insurance plan shall submit to a health examination by a health professional selected and paid for by the employer. It is an offence under this act for the health professional or board employee to disclose diagnostic information to a worker's employer. Such information will be used by the board solely for adjudication purposes."

That information is not required for return to work. That isn't functional abilities; this is diagnostic information, not what the person can do on return.

"Reports re health care

"37(1) Every health care practitioner who provides health care to a worker claiming benefits under the insurance plan or who is consulted with respect to his or her health care shall promptly give the board such information relating to the worker's claim as the board may require."

The same applies for other medical information.

I'd like to look at page 12:

"Obligation to re-employ

"41(4) When the worker is medically able to perform the essential duties of his or her pre-injury employment, the employer shall, in consultation with the workplace return-to-work committee described in subsection 41(6)," and then it goes through that section.

The workplace committee and functional abilities evaluation: If I were to give you a form with the information ticked off on it, there's very little skill in a lot of workplaces, if there isn't some training in place, to tell you how you apply those functional abilities. That tells you what you can do in certain aspects of the job. There's still a matter of doing a job search, looking at how the job can be accommodated. Without some sort of accommodation in the workplace, return to work just isn't going to work.

Chronic pain: The doctors who were talking about that said the ability to change is one of the biggest things an injured worker has to do, but for them to be able to change how they do the job, the workplace has to be able to accommodate those changes. That has to be introduced into it as well.

"41(4)(a) offer to re-employer the worker in the position that worker held on the date of injury; or

"(b) offer to provide the worker with alternative employment of a nature and at earnings comparable to the worker's employment on the date of injury."

What we're trying to do is re-establish pre-earnings accident levels.

"Duty to accommodate

"41(6) The employer shall accommodate the worker or the workplace for the worker to the extent that the accommodation does not cause undue hardship. The employer shall implement a joint return-to-work committee consisting of equal numbers of management and worker representatives:

"(a) the minimum number of committee members is four

"(b) the employer will ensure the committee members are adequately trained

"(c) where a union exists, the union will determine the committee's worker representatives."

It's important. To have a return-to-work program without the skills to implement it does very little for you.

"Suitable and available employment

"42(2) In deciding whether a plan is to be prepared for the worker, the board and the worker shall consult to determine the suitable employment or business for the worker. Such employment or business must be practically available in the vicinity of the worker's community. If the employment or business is available and suitable, the board shall also determine the earnings from the employment business."

This is an important feature. You've heard other people talk about what we had before in deeming and now with the labour market re-entry plan, where you may get some training. Whether there's any job at the end of that tunnel, who knows? This has to be implemented in a fashion where there is something concrete available to the injured worker when they're done that training.

**The Chair:** Mr Redmond, could you please sum up?

**Mr Redmond:** Could I please sum up? Okay.

There's more, on the independence of the WCAT panel.

I just want to make one comment, I suppose, on clause 41(4)(b). I talked about vague and unclear language:

"(b) attempting to identify and arrange suitable employment that is consistent with the worker's functional abilities and that, when possible, restores the worker's pre-injury earnings."

I find that interesting language. My job is basically about 80% negotiations and grievance handling. In that role, what I deal with all the time is drafting language and interpreting language. I have to tell you, if I were to get

that from an employer representative across the bargaining table, where I had some actual power to deal with it, which isn't the case here — it's not worth the paper it's written on. It does nothing. It's subjective. It's unclear. It's open to interpretation. That just doesn't do anything.

Actually, I made a whole page of things I'd like to comment on in other people's briefs, but I apparently don't have time for that. I'd like to thank you for the time you've given me. I guess there is no time for questions.

**The Chair:** No, there isn't, but on behalf of the members of the committee, I thank you for your thoughtful and very comprehensive brief. I know we'll take the time to read it carefully.

**Mr Redmond:** I'm going to check later to make sure you do.

**The Chair:** Okay. Thank you.

## ONTARIO KINESIOLOGY ASSOCIATION

**The Chair:** I now call representatives from the Ontario Kinesiology Association of London.

**Mr Greg Gillam:** My board of directors is mostly in Toronto. They weren't able to attend today, so I'm presenting solely. On behalf of the Ontario Kinesiology Association, I would like to thank you very much for inviting me to speak before the standing committee on resources development regarding Bill 99, the Workers' Compensation Reform Act.

The Ontario Kinesiology Association is the only professional association representing the interests of kinesiologists in Ontario. Founded in 1981, the association is an incorporated non-profit organization, and we currently represent over 900 members. The board of directors consists of certified member volunteers elected annually by the membership. There are three levels of membership, those being student, affiliate and certified, with the certified status having full voting privileges.

The efforts of the board of directors have been extremely fruitful, resulting in the creation of many professional policies and standards which include but are not limited to mission and philosophy statements, scope of practice, standards and ethics policy, educational syllabus, continuing education standards program, professional disciplinary hearings and appeals process, procedural bylaws, a professional exam and a voluntary college, both in process.

Through the efforts of the board of directors, the association has also enjoyed a heightened professional profile from its membership and involvement with both the Rehabilitation Council of Ontario and the Alliance of Environment, Health and Safety Professions of Ontario. A lot of the professional policies I mention are provided in the submission.

The Ontario Kinesiology Association believes that a kinesiologist is a highly educated and uniquely qualified health care professional. Our certified members receive the designation of certified kinesiologist after completion of a honours bachelor of science degree in kinesiology



from an accredited university. They are bound by and accountable to the professional policies and standards mentioned above. With reference to the purpose of these public hearings, the Ontario Kinesiology Association feels that kinesiologists are significant providers of therapeutic interventions such as exercise prescription, work hardening and work conditioning, education as it pertains to safety, health and lifestyle, ergonomics, case management and vocational rehabilitation. Additionally, kinesiologists are regularly employed in evaluative procedures such as functional abilities evaluations, physical demands analysis, worksite analysis, cardiovascular assessment and strength testing.

Many of the ergonomic specialists within the current Workers' Compensation Board have their educational background in kinesiology. Kinesiologists are widely employed in regional evaluation centres, community clinic programs and rehabilitation clinics throughout Ontario. For the purposes of this public hearing, we wish to address the issues of injury and disease prevention, health care and return to work, as outlined in the act.

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Firstly, as pertaining to part II, injury and disease prevention, the OKA is very pleased to see a major focus placed on this component. We feel this is an essential issue in the promotion of health and safety for the worker. Realizing that work-related injuries and occupational disease lead to very costly losses in production and revenues, we also believe that this focus will be equally beneficial to the employer. We recognize and support the functions of the board as outlined in part II, section 4(1), items 1 to 11, of the act. The association holds the principle of workplace safety and injury prevention in the highest regard. Our educational background and professional philosophy equip us with the necessary tools and perspective to provide and promote these key services to both the worker and the employer. Resultingly, kinesiologists have been proficiently performing these services for many years.

As a point of information regarding part II, section 4(1), items 4 and 5, we ask that you carefully review the standard of the certified kinesiologist as a qualified person who is required to be certified for the purposes of the Occupational Health and Safety Act. We feel that the certified kinesiologist offers an excellent and appropriate level of skill and education which is relevant to the guiding principles laid out in the Occupational Health and Safety Act. The content and structure of that certified kinesiologist designation is also in the submission.

Again, the OKA is very encouraged with the government's focus on injury and disease prevention. We regret that we have not been more involved in the early development stages of the act, but we ask that the standing committee on resources development would recognize the special skills and abilities that certified kinesiologists can bring to the further development, implementation and day-to-day operation of such an issue. We offer our expertise,

commitment and enthusiasm to the future success of the Workers' Compensation Reform Act.

Pertaining to part IV, section 32, health care, we recognize the content of items (a) to (g), noting that we are currently involved in the activities relating to items (a), (b), (e), and (f). We ask that certified kinesiologists continue to be involved in any future developments or modifications to these items as the board deems appropriate.

Pertaining to part IV, section 33(4), the association requests that the board would invite the association to be involved in the establishment of fee schedules, should this be undertaken. We feel that kinesiology is a key stakeholder in the health care of injured workers and, resultingly, we would have valuable information to provide to such an endeavour. As an example, the OKA has been directly involved with the establishment of similar fee schedules for Bill 59, the Automobile Insurance Rate Stability Act, since first being invited in August of last year.

With regard to part IV, sections 35(1) and 36(1), we request that certified kinesiologists be included to the list of health professionals selected by the board for the purposes of providing components of a health examination to a worker who claims or is receiving benefits. Such components may include a functional abilities evaluation or physical demands analysis.

Concerning part IV, section 37(3), we also request that certified kinesiologists be included in the list of health professionals that may be requested by the injured worker or employer to provide information as may be prescribed concerning the worker's functional abilities. As many kinesiologists are regularly responsible for performing functional abilities evaluations and work site analysis for injured workers, we believe we are a key stakeholder as well in the delivery of that information regarding the worker's functional abilities.

Finally, with regard to part V, return to work, section 40(b), the Ontario Kinesiology Association asks that certified kinesiologists, recognized as being key stakeholders in the injured worker's recovery process, be consulted and involved in the identification and arrangement of suitable employment which is consistent with the worker's functional abilities. The understanding and information gained by the health care worker during the recovery process is extremely applicable and beneficial to the matching of a rehabilitated worker to suitable employment.

In conclusion, the OKA is very supportive of the government's plan to revise the workers' compensation system in a manner that will improve health and safety for workers and effectively address the unfunded liability of the current Workers' Compensation Board. We thank you sincerely for inviting us to present our ideas and we strongly encourage the new board to maintain a close and effective relationship with key stakeholders such as certified kinesiologists.

**Mr Patten:** Mr Gillam, thank you for that. Do you feel your profession is left out?

**Mr Gillam:** Yes, a little bit.

**Mr Patten:** A bit. Okay.

You say that you're very pleased to see a major focus being placed on injury and disease prevention. Where do you see that as a major focus in Bill 99?

**Mr Gillam:** Just with regard to looking through the act when I was preparing for this public hearing. It seemed that there was a fair bit more content and focus on injury prevention; as well, it was included in the long title of the act. From that I concluded that it was a bit more of a focus than health care and return to work.

**Mr Patten:** Sometimes you see titles on these funny newspapers when you come out of the grocery store. I saw one today and it had "Elvis's Tomb Was Empty," implying that probably he's somewhere else. So titles don't always convey the content of what may be there.

The reason I asked this, Greg, is not to be cynical, but when we see the threat to the disease panel and we see the closure of some of the clinics and functions related to the prevention side of things, I just don't see where that is. I think it's a net loss from what exists now. That's why I asked you. If you have any other information on that, I'd be very pleased to see it.

The other part is in relation to the role. As you are now, you work in a team concept with other professionals. In the initial assessment I suppose a doctor may refer someone to you. Would that be the case?

**Mr Gillam:** Yes.

**Mr Phillips:** How would that work? How do you feel your profession can better make its contribution? I know you've listed them here, but so we can all understand it, how might an ideal situation work so that the best of what your profession has to offer comes to the fore?

**Mr Gillam:** It seems that a lot of times in the process, the family physician or even the employer physician don't refer people for evaluations such as a FAE or a physical demands analysis, period, or sometimes not nearly as soon as they could. The communication is often poor. The history for the worker is often poor. Resultingly, we can perform the task, but not knowing a worker's background or history, the kind of work they do, it's a little harder to take that into perspective when modifying the functional abilities evaluation, let's say, more towards what they need. It's not something that's absolutely "One size fits all." We can modify the test.

**Mrs Boyd:** Thank you very much for coming. I was interested to know whether you were here when the RNAO made its presentation.

**Mr Gillam:** Yes.

**Mrs Boyd:** They raised concerns about sections of the bill, particularly section 33 around what the requirement would be for registered nurses if they were case managers. I gather that part of the gist of what you're saying is that you also are professionally qualified to do many of those adjudication issues. Do you have the same concerns, given your ethical standards in your profession, about the requirements within section 33 around the focus of treatment being to save the workers' compensation plan money, as

opposed to determining questions according to the appropriateness of health care itself?

**Mr Gillam:** We do have similar concerns, yes.

**Mrs Boyd:** Have you taken a position on that? I didn't see it in your presentation. I wondered if you had communicated that in any way to this committee other than the presentation.

**Mr Gillam:** No, not thus far.

**Mrs Boyd:** If you are successful in getting the attention that — really, you are professionally qualified to do it. I know from going through the registered health professions process that there was a lot of work done to help all of us understand what the actual profession did and what its qualifications were and what the scope of practice actually meant. I think it's important always that those ethical concerns, when we're trying to get that scope of practice recognized, need to be stated quite explicitly.

**Mr Gillam:** We have approximately the same attitude as nurses. Educational background is very similar, looking at the whole person with regard to rehabilitation. If we had to make a choice, it would be the welfare of our patient rather than the overall fiscal responsibility, although I didn't accurately state that.

**Mr Christopherson:** I appreciate the fact that a lot of this is making sure that your share of the turf is covered off. I don't have any problem with that whatsoever; that's part of what your job is as an association. However, when you offer up the kind of blanket support you have, I feel compelled to press the issue a little.

In giving your support to the government and Bill 99 — and I'd appreciate you explaining it to me if you do — do you think it's fair that the injured workers who are affected by the changes are going to lose 5% of their income at the same time that the corporations responsible for funding WCB get a 5% cut in the premiums they pay?

**Mr Gillam:** I don't necessarily have any real comment on that.

**Mr Christopherson:** Given your emphasis on health and the prevention of injury, I'm sure you're familiar with the Occupational Disease Panel, and as such you'd be familiar — I can read out letters and give you copies, if you wish, from around the world showing support for the kind of work they do. Do you agree with the fact that the ODP is being folded back into the WCB as part of your support of Bill 99?

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**Mr Gillam:** No, that's not something we formally support. I had about a week and a half to prepare the submission, and I work in a different aspect of rehabilitation. I really have not had a lot of opportunity to prepare absolutely everything we have an opinion on.

**Mr Christopherson:** It's possible that not only the ODP's folding in but perhaps other aspects of Bill 99 don't get quite the same general endorsement that maybe your presentation leads one to believe.

**Mr Gillam:** That's right.

**Mr Carroll:** Mr Gillam, I'm going to stick the areas you've ventured an opinion on rather than try to trap you.



Are you familiar with the return-to-work functional abilities proposed form? Have you had a chance to look at this?

**Mr Gillam:** Just briefly.

**Mr Carroll:** Have you looked at it enough to be able to comment on a couple of things? First, does it ask that a medical practitioner provide information that somehow should be kept confidential? Second, can you design an effective return-to-work plan without an evaluation of a person's functional ability? The second question's probably more important than the first.

**Mr Gillam:** No, we very much feel that we would be unable to provide a return-to-work program without an assessment such as a functional abilities evaluation or a physical demands analysis. We would very much prefer to have that information.

**Mr Carroll:** In your professional opinion, can a return-to-work program be designed without the information provided by a functional abilities evaluation?

**Mr Gillam:** No.

**Mr O'Toole:** Greg, I'm pleased to have a chance to ask you a question and I thank you very much for your informed presentation. All of that little preamble may be a bit biased, because my daughter's in third-year kinesiology here at Western. I hope there is a future for her and for you as well, and for your organization.

I just want to deal with a couple of little sections here. The prevention language within this act you commented on. This new bill is an important part, the upfront part. It's the bringing it into and making safe workplaces. Then the return-to-work provisions are an important part.

I'm going to qualify that by saying we've heard from other health care professionals just in the last week that the early return to work is an important part of the healing, recovery and getting back to what can be normal for an injured worker. Your new profession specializes in work accommodation. These are new kinds of things; ergonomics and workplace design and all those kinds of things are recent developments, perhaps in the last decade. A lot of people here perhaps didn't know what a kinesiologist was. It would be evident to me that you're supportive of the bill for those reasons, the prevention and the accommodation, return to work. Can you give me some feeling on that, on whether I misunderstand?

**Mr Gillam:** You are correct. The reason my submission was somewhat vague is that it seemed that the language of the act was a bit vague in that there was no real mention of the meat and potatoes of what was going to be happening with prevention: time lines, the steps that were going to be taken. But we very strongly agree and promote the principles of return to work and injury prevention through education and safety.

**The Vice-Chair (Mr Jerry J. Ouellette):** Thank you very much for your presentation.

## STEVENSON AND HUNT ASSOCIATES

**The Vice-Chair:** We now ask for a representative from Stevenson and Hunt Associates, Mr Ed Holder. As I'm sure you're aware, you have 20 minutes for your presentation and any remaining time available can be divided between the three parties for questions and answers. Thank you for attending today.

**Mr Edwin Holder:** I appreciate the opportunity to be here in front of you to make some representations with respect to Bill 99. If I may, in appreciating that you've now just received this text, I'll work to the test and be within our time lines.

As an employee benefits consultant working with employers across the province, the issue of workers' compensation has always brought about mixed responses about the workers' compensation process. Whether the issue is the length of time it takes to get a decision on a workers' compensation claim right to the unit costs associated with this program, the Workers' Compensation Board does not typically receive high marks for performance from either employers or affected employees.

We applaud the initiative in reforming workers' compensation as something whose time has certainly come. A major public relations effort may be necessary, though, to convince employers that these initiatives will have the desired effect.

In general, employers to whom I speak talk in terms of the massive, unaccountable bureaucracy making decisions, often inappropriately and slowly, that affect their employees and have a significant impact on the expense side of operating their business. To be fair, much of the criticism relates to historical experiences with the board and this reputation is one, deserved or otherwise, which the board needs to overcome.

Another general feeling is the sentiment expressed by employers that most employees have legitimate claims. However, it is the actions of a minority of employees in terms of abuse of the system that causes a growing sense of frustration with workers' compensation.

It is with this broad backdrop that the responses to restructuring the Workers' Compensation Board which I have heard range from a sense of relief to marked cynicism. The comments from various employers are primarily anecdotal, as concerns were expressed by some that to be particularly public would not be perceived by their employee groups in a positive way. I'd be pleased to expand on that in more detail.

Employers recognize the need to deal with the massive unfunded liability, hovering around \$12 billion. Whether that number is plus or minus \$1 billion, there is an underlying sense that while much needs to be done on the entitlement side, little can afford to be done on the employer cost side. The unfunded liability is just too massive. Positive feedback was generated on the issue of decreased entitlement, not to be punitive to affected employees but rather to be more in line with other benefits programs, both public and private.

Employment insurance, the federal program, has a disability benefits program which provides 55% of weekly earnings to an overall plan maximum, and this benefit is taxable. The Canada pension plan has a disability benefit which, upon eligibility, provides a fixed minimum monthly benefit and a percentage of a disabled person's retirement pension to the tune of about \$835 approximately. Even privately insured plans typically range from 55% to 70% of earnings for disabled individuals. To reduce the entitlement from 90% to 80% of the difference between the net average pre-disability earnings and the net average earnings that the worker is earning is still considered on the high side of benefit entitlement.

The feedback I received in terms of workers' compensation reform also cited the myriad programs providing income replacement. To the extent that the government's role would be that of referee to allow private plans to administer the program, or at least give employers the choice of the government or to subcontract out to comparable private plans, was referenced many times.

1750

In the case of compensable conditions, the issue of removing mental stress as a potentially compensable circumstance is a positive step. It is often difficult to determine what is a bona fide claim. The fact that long-term disability contracts in the province of Ontario are required to include mental and nervous conditions as legitimate causes of disability should accommodate employees' legitimate claims. The impact on private plans, however, has been dramatic increases in long-term disability unit rate costs for employers, as mental and nervous conditions have potential major impact on plans.

I acknowledge that the spirit of these reforms is considered significant, including making prevention of illness and injury a primary focus; restoring the financial viability of the workers' compensation system; re-establishing the system as a workplace insurance program; improving the return-to-work process; enhancing worker and employer self-reliance in resolving disability and return-to-work issues.

The objective to manage claims and establish the financial viability of workers' compensation to stand alone is considered a positive process. Introducing means to reduce the current unfunded liability and to streamline administration and speed up the appeal process and time frames is also considered a very positive situation.

Employers are consistent in their view that workers' compensation must be more consistent in handling and adjudicating claims. It must allow more flexibility from a cost standpoint, to have target rates more accurately reflect the composition of the workforce; reduce the bureaucracy in dealing with claims; treat employers as clients, not as parties who only pay the bills; get its financial house in order and reduce the duplication with other programs, public and private.

We appreciate the opportunity to make this presentation to the committee. I look forward to your comments and questions.

**Mr Christopherson:** Thanks for your presentation. You raised the issue of the long-term disability plans and their costs rising for employers. How many employers do you think, as a percentage of all employers, have a comprehensive long-term disability plan available?

**Mr Holder:** In our estimation, some three quarters to 80% of employers in the province would have long-term disability programs.

**Mr Christopherson:** That's an interesting figure. I'm not questioning your comment. I haven't seen anything to the contrary, but anecdotally I find that a little high. Do you have any documentation?

**Mr Holder:** I'd be pleased to provide some for you. I could forward it to the standing committee for your purpose.

**Mr Christopherson:** I'd appreciate that. Thank you. Next, I'd like to raise the fact that those long-term disability plans, as you know, are for injuries and illnesses not related to work. The WCB is strictly for work-related injuries. The tie-in, the reason I raise it this way, is that for a lot of workers who don't have a plan — even if you're right, 20% don't, although I really think that's very low. But for every worker who doesn't have any kind of LTD, if they're denied WCB they're on social assistance, which in effect means all taxpayers are paying for something that originally was meant to be an employer cost since that injured employee can't seek justice in the courts any longer.

*Interruption.*

**Mr Holder:** I didn't bring anyone with me.

**Mr Christopherson:** Well, you're learning, aren't you?

**Mr Holder:** Yes. This is an interesting process.

If I may, the statistics I'm prepared to provide you will also indicate and the general sense would be that most employees covered by — forgive me, again this is anecdotal, and I will come back to that comment in a moment. My best sense is that most employers who have workers' compensation in fact have long-term disability plans.

One thing I did want to clarify, though, because there are certainly exceptions to that — we're not suggesting, by the way, the removal of workers' comp. Let's be clear on that. That's not what we're talking about. But long-term disability would typically treat the benefit as a 24-hour benefit, with workers' compensation more as an exclusion as opposed to an exception. That is to say, we have long-term disability programs that if there is no workers' compensation — and there are some firms that have no workers' compensation — long-term disability is written on a 24-hour coverage, just so you know and just for your reference; short-term disability as well, by the way.

**Mr Christopherson:** We hear a lot about how many small businesses are affected and how many small businesses there are, and that's the new area. I know for a fact that there are very few extensive benefits available in a lot of the smaller firms, perhaps for good economic reasons, but the reality is that they don't have them.



I'd like to come back to the top of that same page where you say, and I'm a little unclear what you mean: "And whether that number" — meaning, as you call it, the "massive unfunded liability" — "is plus or minus \$1 billion, there is an underlying sense that while much needs to be done on the entitlement side, little can afford to be done on the employer cost side." I'm unclear what that means.

However, my question to you would be regarding the unfunded liability. If indeed one buys into the argument — we don't, but if you buy into it — that that \$1 billion over three years is significant, over a period of time the unfunded liability will be taken care of. However, if you don't agree with that — and you don't — if you feel it is such a crisis, how can one justify, from an actuarial point of view, giving back \$6 billion of revenue when you're saying the unfunded liability is such a crisis that it necessitates going after injured workers to the extent of taking away 5% of their income?

**Mr Holder:** Let's press that forward. To quote you, sir, I wouldn't suggest that \$1 billion is a crisis, but I would certainly argue that \$11 billion or \$12 billion is clearly a crisis.

From our perspective, the issue is that the modest reduction that is perceived to go into the employers' hands — and I say "modest" in terms of overall benefits and other costs related to the social net that employers take responsibility for — is more than offset when one looks at the history of the rise in long-term disability increases, which have gone up dramatically, in fact partly as a result of legally requiring that mental and nervous conditions be considered part of a compensable claim in Ontario. As such, long-term disability rates have gone up dramatically, frankly to offset the need to cover off the potential exposure that's there.

It is certainly not my objective here to speak for employers across the province, but for those with whom I do business, who have the sense that workers' compensation is an increasingly expensive component of their business, the reduction in the rate is a modest one. But I'll suggest to you that it's a step in the right direction. I think employers will look at that reasonably positively.

**Mr Christopherson:** Sure. Why not? I find it interesting that —

**Mr Holder:** I'm sorry. I didn't realize we were going to have a discussion about the creators of wealth. But I'll suggest to you that when it —

*Interruption.*

**Mr Christopherson:** It's interesting that \$12 billion is a massive amount, but suddenly \$6 billion is not when it's being given back to the employers.

**Mr Hastings:** Thank you, Mr Holder, for a very succinct presentation. There seem to be two evident themes coming out of these hearings by the various deputants. One, there's the perpetual denial that there isn't any dollar crisis at all, that in fact it's minor, if that, and events will look after itself after a while, and we have the NDP's total monopoly on compassion — nobody else could have the

remotest understanding about injured employees or anything do with them, which of course is absurd — and also the union movement's proclivity for pretty well accepting the untimely, totally unacceptable status quo in terms of getting compensation benefits, pension benefits or anything else to injured employees. I'd be curious to know how you would specifically structure, from some of the points you allude to on page 3, particularly with respect to "treat employers as clients" — I would assume you'd also expect the WCB staff to treat employees as customers — how you would structure a more focused customer service environment in what is now an excessively bureaucratic, unresponsive, unaccountable, insensitive approach to its customers, whether they be employers, injured workers, rehabilitated folks, retirees or the medical community.

**1800**

**Mr Holder:** Thank you. If I may, I'll come back to my first comment that employers feel that most employees have legitimate claims. I'd like that to be the backdrop. I think workers' compensation recognizes that there are two components to the client base: One is the employer and the other is the employee, whether you call that client or customer, and we see that in our business, with our various suppliers in the insurance company field. Certainly you have the employers who in part foot the bill, and I'll make the point that in long-term disability benefits employees often pay some or all of the costs. It is important to know that employees have a great stake in this as well in the long-term disability sense.

But in that regard, we certainly view our suppliers' responsibility as ensuring that the way their customers or clients, as we call them, from the employer right through to the employee, are treated in a very fair way and with some dignity.

It's interesting, and I'm not sure how historical this gets, but again in the feedback I have gotten, and why I referenced a couple of times in this presentation the need to do some public relations, is the sense that there is workers' compensation on this side, and they're the bad guys, and it's the employer always fighting with workers' compensation. But further than that it doesn't care about employers, and I have the sense in some cases that they don't care about employees either, if I may. So it isn't just employers; it cuts both ways and that's a tragedy.

I think that to be customer-focused to the extent that we're going to survive in business and have meaningful jobs for employees in the future is going to predicated on organizations like workers' compensation, if they wish to survive, treating employers and employees like they're customers and treat them best. That's certainly the theme you hear often now in advertising, and frankly, it's damned time.

**Mr Hastings:** How do you get, Mr Holder, into this culture? There are some who try their best as employees to —

**Mr Holder:** I think accountability is part of it and it's what I've understood and read from the position of reform in Bill 99, the talk about bringing the service that much

closer to the customer, to the client, to the extent that some form of regional responsibility is there. One initiative I can tell you I've got some mixed feelings on, and I'm not certain what's going to happen, is the sense of bringing the employer and the employee back together following the disability or during the process of rehabilitation to try to get them back to some meaningful, positive, forward direction.

To the extent that some employers indicate to me that there's not a willingness on the employee's side — and I know employees who would say from the employer's perspective it's not there — I think that workers' compensation has the opportunity to be the conduit and to maintain the customer focus.

I don't think that when an employee goes out on disability, the employer's objective is to get rid of him. That's certainly not the sense I have had in 21 years of dealing with disability benefits and rehabilitation as they relate primarily to the insurance companies' side and them as supplier. In broad terms in most times, the objective of certainly the insurance company is to rehabilitate because it's financially in their interest to do so. But the other component is for employers, I think, as long as there's an opportunity and a reasonable window of time, to the employee back to a meaningful position.

I think it's working more closely between employer and employee, and to the extent that this reform does that, it will certainly be perceived as a positive step to break down some of the potential animosity, and in some cases real animosity, that is there in what is deemed to be a very high stress time when someone is disabled.

**Mr Hoy:** I am glad to see you here. We're now into evening. You talked about the unfunded liability and others have done the same from time to time. What is your definition of an unfunded liability?

**Mr Holder:** The right question: Ultimately it's looking at the current resources of a facility or an organization based on, if you will, its present value and trying to determine whether it's solvent or not solvent to the extent that there are sufficient funds to accommodate on a present-value basis those obligations for which they are contractually required to pay out.

In reference to workers' compensation it would be that if you took the present value of the debts that are obligated — a case in point would be again from the insurance company's standpoint — if we moved a contract away from an insurance company, sir, from any insurance carrier to another, that insurance company would be left with a liability. In other words, they have a reserve they must set aside with the anticipation that based on the type of disability it is, they are going to pay out for so many months, so many years or to the normal retirement date or whatever the terms and conditions of a contract might be.

The unfunded liability for that party would be that if there were nothing in existence today, if there were no offsetting premiums to offset the expense required, then that would be deemed to be an unfunded liability, which is why insurance companies are required to set aside mas-

sive reserves — and I'll use that word quite specifically — that can range in the \$1-million, \$2-million range for someone who is in their 30s who has a circumstance or condition from which they might not return.

From the perspective as it relates to workers' compensation, I'd suggest to you it's the present value, based on premium, which is the workers' compensation unit rate, relative to the payouts that I would deem the definition of unfunded liability to be.

**Mr Hoy:** In other insurances, a lot of their reserves can be garnered not through premiums but other ways. True enough?

**Mr Holder:** Like investment income, that sort of thing? Exactly. They would have to specifically set aside dollars, and even on a present-value basis. So if someone were disabled and had a \$1-million payout, for example, the insurance company is not required to set aside \$1 million, but they would be required to set aside a sufficient amount that with interest would accommodate that need.

**Mr Hoy:** And these insurance companies assume, and I'm relating it to WCB as well —

**Mr Holder:** Yes, that's reasonable.

**Mr Hoy:** — that not everyone is going to have a claim.

**Mr Holder:** You're right. In fact, that's how the morbidity tables are determined and what they are designed to determine. But when you set aside a reserve, it's an actual dollar reserve that you have to set aside for an actual condition. When we talk about the unfunded liability, in my view, as it relates to workers' compensation, we're talking about actual claims and circumstances where there are dollars to be paid out.

**Mr Hoy:** On another point you made you talked about the laudable goals of the bill as it relates to prevention of illness and injury. Do you have any opinion on the elimination of the Occupational Disease Panel?

**Mr Holder:** If I may, the reference to occupational disease as it relates to the mental and nervous condition component is one I'm sure gave the group some difficulty in assessing, but in group disability contracts, compensating for mental and nervous conditions is required by law. As such, to the extent that you remove the mental and nervous condition references to the workers' compensation compensable claim issue, I think to that degree it will have less impact on those claimants simply because that will not be a legitimate claim against the program.

**1810**

**Mr Patten:** The panel had been doing illnesses that it had suspected in the workplace, and indeed you can make the case that it saved this province a lot of money and a lot of resources and a lot of heartache and a lot of tragedies by being able to identify and pinpoint the situations of asbestos, for example, or carcinogenic exponents that arise from the workplace in mines or whatever the workplace may be, chemicals, this kind of thing. They look at the big picture in some of those areas and diseases that people are afflicted with that are highly suspected to have come from the workplace.



The issue is that under this bill they would lose their independence to be able to move on those kinds of issues. The only two big groups that have been against them are in the mining business, as you can imagine, the Ontario Mining Association, Inco and maybe Falconbridge. This is a group that is internationally recognized for some of the work they've done and have been successful with relatively humble resources to work with, like about \$1 million or so, which is not much money in research, as you well know.

**Mr Holder:** For your reference, ladies and gentlemen, in preparation for this meeting today I undertook to survey a number of our clients across the province to get some sense of their feelings about workers' compensation. I must admit to you that notwithstanding some who had hope and some who had cynicism, many weren't even in the loop as to some of the changes that are even being considered. No employer of the I would suspect 50 employers with whom I had contact had any opinions or comments with respect to the occupational diseases board, so I can't comment how they would have felt about that.

**The Vice-Chair:** Thank you very much for your presentation.

#### LONDON OCCUPATIONAL SAFETY AND HEALTH INFORMATION SERVICE

**The Vice-Chair:** We will now ask the representatives from the London Occupational Safety and Health Information Service to come forward and identify yourselves for Hansard.

**Mr Michael Klug:** I'm Michael Klug.

**Ms Melanie Purres:** Melanie Purres.

**Mr Klug:** Good evening. I'm a labour lawyer here in London, Ontario. I represent workers and trade unions in this area on a variety of issues, including workers' compensation matters. I speak to you this evening on behalf of the London Occupational Safety and Health Information Service, which is a community-based information service that focuses on preventing workplace accidents and injury in this area.

By way of background, LOSH, as stated, is primarily involved in providing information to employees and employers regarding how to prevent injuries at work, and it's from that perspective that we give this presentation today. In addition, though it's not a focus of LOSH's work, it's not unusual for us to become involved in dealing with some of the consequences of workplace injury after they occur, and as a result LOSH has some considerable familiarity with the WCB system and some strong feelings with regard to it.

LOSH has been in existence for some eight years now; has responded to thousands and thousands of inquiries from workers and employers in this area; employs a trained and experienced staff on many occupational health and safety issues; and offers a library available to the public on occupational health and safety issues.

I will be speaking on a number of issues, not comprehensively or in any detail on Bill 99 as a whole, simply because of, obviously, the lack of time that has been made available for presenters as a whole. I will be speaking in particular about the impact of Bill 99 on those individuals who suffer repetitive strain injuries, which is a critical issue in this province economically, socially and morally, and which LOSH has very strong feelings with respect to, in large part because almost half of the inquiries we receive from the public are related to repetitive strain injuries. LOSH is a recognized leader with respect to RSI and has published a well-recognized and well-received book by the title of *When Aches Become Injuries*. The second edition is due this fall. LOSH, and in particular Mr Frank Stilson, the executive director of LOSH, who wishes he could be here but unfortunately cannot, is a recognized expert in the field of repetitive strain injury.

As indicated, we're not going to be able to deal comprehensively with the many significant issues that are raised by Bill 99. It is, as the government itself has deemed, a complete rewrite of one of the most significant pieces of legislation in the province. I have 10 to 15 minutes and I'm going to focus my discussion on health and safety issues as opposed to what happens after the injury occurs, in particular on three issues: the elimination of the Workplace Health and Safety Agency, the partial transfer of that agency's work to the Workers' Compensation Board; repetitive strain injury, the impact or lack of impact of Bill 99 on those who suffer from repetitive strain injuries; and the elimination of the Ontario disease panel, about which there has been some discussion already this afternoon.

I preface my more detailed comments to follow with some general comments with respect to Bill 99 and specifically how Bill 99, in our estimation, will affect the issue of prevention of accidents. It has been duly noted and repeatedly pointed out by members of the government that Bill 99 is about prevention of accidents, and it certainly makes sense that a workers' compensation system should place pre-eminent importance on avoiding the tragedy before it occurs. The concern with respect to health and safety, with which the government has attempted to justify the passage of Bill 99, has attempted to sell Bill 99, if you will, with this notion of health and safety, is reflected in the new name of the new Workplace Safety and Insurance Board, the name of the act, of course, and prominently in the new section 1 of the act, which states the pre-eminent concern of the new WSIB to be the promoting of health and safety in the workplace.

LOSH obviously agrees with the government's stated objective of promoting health and safety but has serious and grave doubts as to whether or not Bill 99 will do anything whatsoever to promote health and safety in the workplace. In fact, quite to the contrary, LOSH is of the view that Bill 99 will actually lead to more dangerous workplaces in Ontario and that in point of fact this discussion of health and safety and how the government has played up that Bill 99 is about health and safety is really

an indication of little more than the government playing lip-service to the idea of health and safety when the reality is something quite different, and it requires us to look at some of the details of the act. But most generally the act is about reducing compensation to employees through a whole litany of nicks and bites and cuts, a little bit here, a procedural change here, 5% off the top there, taking away powers from WCAT and so on and so forth, the issues that have been talked about. When you really get down to it, it's about taking money from injured workers.

LOSH has some concerns with that on its own, but it also in particular has concerns with the general direction of taking money from injured workers because it will, in our view, have an impact on the safety of workplaces as well. It's our view that if you make it cheaper to injure workers, more workers will become injured. I think the members of the government side, as attuned as they are to the needs and thinking of the business community in this province, are well aware that it is the bottom line which drives these matters. If we as a society make it less costly to employers to injure workers, it is reasonable to assume that there will be more injured workers at the end of the day. It would be LOSH's view that as a general policy prescription it makes sense not to reduce the cost of injury in this province.

#### 1820

It has been noted by other commentators — in fact Ms Witmer has indicated that it is her intention to make Ontario statistically the safest place to work in the country or on the continent. LOSH's view is that it is quite possible that there will be a radical decline in the amount paid to workers and in the actual number of claims made under the WCB. It is obviously only common sense, though, that a reduction in claims does not necessarily mean a reduction in injuries. It is from this very basic, self-evident proposition that the government seems to go off the rails with respect to its concern. Its concern more properly put, from our perspective, is a reduction in claims as opposed to a reduction in workplace injuries.

We see this in the new reporting provisions, of which many workers will fall through the cracks, which will reduce claims but will leave them at home without benefits, still injured and probably uncounted and uncalculated with respect to the total of workplace injury in this province as a result. We see this in the back-to-work provisions which will limit payment to workers and put them back into situation which they should not be in. We see it significantly in sections 12 and 13 of the new act, which appear to potentially completely eliminate entitlement in the chronic pain and stress areas. We see it in the limitation provisions with respect to appeals and so on and so forth.

What LOSH is concerned with is not the reduction of claims; LOSH is concerned with the reduction of injuries and the consequences of those injuries. Again, we see little, if nothing, in this act which will actually improve the situation for workplace health and safety in this province.

LOSH, in my experience, is not a supporter of the status quo with respect to health and safety and the board's involvement in health and safety. The board, as most everybody knows, is very passive with respect to health and safety issues. You have instances in claims which come before the board, and time and time again the board will take no action other than to actually process the claim, decide if benefits are payable and so on and so forth.

Claims which reveal faulty working conditions, dangerous working conditions, should in LOSH's view automatically, as a routine matter of course, lead to a referral to some specialist, whether it be an ergonomist, a kinesiologist, a registered nurse or whatever; somebody who has some expertise in these matters. When a claim comes in and reveals that the injury is a consequence of the working conditions, the matter should be referred to a board employee and contact should be made with that employer to ensure that the faulty working conditions are addressed. That individual, in LOSH's view, should have the power to enforce the Occupational Health and Safety Act, and if need be, ultimately to order the employer to rectify the dangerous working conditions at issue.

That, at least in my understanding, has never been the case with the Workers' Compensation Board, and it is only — I hesitate to use the term — common sense that the Workers' Compensation Board become involved on that level.

I have provided in the organization's written submissions a case example of an RSI sufferer. This woman was 42 years old, worked some 18 years with her employer, contracted repetitive strain injury, went off, was denied benefits, is on welfare. It's not an unusual story. The significant point, though, relating it to my earlier comments, is that some time after she was off work, the other individuals she worked with were contracting exactly the same condition.

Repetitive strain injury is oftentimes quite easily preventable with a new chair, sometimes, or proper positioning of a computer monitor. If there was a system within the Workers' Compensation Board by which employers could receive intelligent advice from specialists in this area — LOSH is not in favour of the Workers' Compensation Board necessarily acting as a hammer with respect to employers — I'm sure most employers would see the wisdom of altering the workplace so that it's ergonomically correct. But there simply is no mechanism currently in place for the board to become involved in those issues, and LOSH recommends that some alterations be made in that regard.

With respect to the Workplace Health and Safety Agency, Bill 99 of course kills this agency, and LOSH regrets the fact that the Workplace Health and Safety Agency no longer is. Some of the powers of that agency have been transferred to the new Workplace Safety and Insurance Board. LOSH, as a general matter, is opposed to this transfer of responsibilities to the board. There are a number of reasons for this. Prominent among them are the



concerns with the bureaucratic nature of the board and the fact that the very important work of the Workplace Health and Safety Agency may very well become lost within the board and not receive the attention it deserves and consequently not be as effective as it should be.

LOSH is also very concerned that the representation of workers on the Workplace Health and Safety Agency which existed prior to Bill 15 has been eliminated. It is absolutely axiomatic within the field of occupational health and safety that it requires involvement of the employees. On the larger scale of the changes within occupational health and safety, to have the issues of training and accreditation of employers and the review of employers left in the hands of individuals who have no immediate connection with the workplace or with workers automatically casts some question on the effectiveness of the board taking over the duties.

On a more technical note, the former functions of the agency were noted in section 16 of the Occupational Health and Safety Act. LOSH notes that the agency, prior to the Bill 99 amendments, had the power to advise the WCB if accredited employers operate in such a manner as to reduce the hazard to workers in the workplace. That's clause 16(1)(k), and clause (l) also had the power to advise the WCB if employers fail to take sufficient precaution for the prevention of hazards in the workplace. In other words, the agency not only accredited employers who were deemed to have safe workplaces and therefore had the effect of reducing their premiums; they also had the opportunity to continue to monitor such employers.

The concern LOSH has is that those responsibilities have not been transferred to the board, whereas most of the other functions of the agency have been. So we have what appears to be, on the face of Bill 99 — section 4 sets out the new functions of the board, which are essentially, in many respects but not all, the functions of the old agency. They do not include clearly the obligation or even the power to continue to monitor employers once they have been accredited.

I don't know if this is a drafting error, but obviously we have a concern that the issue is not just getting the employer in the door as having a safe and healthy workplace. It's one thing for an employer to be able to dress up their workplace as having all that's needed in terms of workplace health and safety processes in place, but it's another to maintain that process over time, which is what's required, obviously, and should be required if an employer is to receive the benefits under the act for being accredited.

1830

Moving on to the issue of repetitive strain injury, I note in some of the materials that came out with the act and some of the comments by government members that Bill 99 is a modernizing type of legislation which is supposed to take the WCB system into the 21st century and deal with the modern realities of work. But one of the modern realities of work and workplace accidents and injuries is repetitive strain injury. It is an epidemic, as indicated in

this province, with untold thousands of workers suffering — and not just workers, for that matter. These are our colleagues. These are people from all walks of life, though primarily, to be fair, women.

This is a leading occupational illness. For the government to introduce a piece of legislation dealing with occupational illness and deal not at all with repetitive strain injury is scandalous. There is absolutely nothing in this legislation which at all deals with this pressing social and workplace problem.

As indicated earlier, RSI is often very easily prevented. There should be and must be, in LOSH's view, some mechanism put in place for the WCB to educate employers, to become involved with employers, to ergonomically, correctly construct their work stations as it relates to computer keyboarding.

**The Chair:** Excuse me. You have about a minute left in presentation time.

**Mr Klug:** On the RSI issue, very quickly, it's not just a matter that nothing is being done. That would be bad enough. There appears to be serious backward steps, particularly with regard to section 13, the chronic pain issue. Many other side claims get bounced into chronic pain type cases. As has been noted numerous times, section 13 appears to presage this notion that chronic pain benefits will be limited to the usual healing time, which is absurd, given the definition of "chronic pain" that currently exists.

Also with regard to RSI, section 21 is the limitation with respect to reporting. The employee has to make their own claim now and has to do it within six months of the accident, except for an occupational disease. RSI cases oftentimes will be gradual onset cases, and often an employee will grin and bear it, stick it through, often not seek medical attention for some time. There is a possibility with section 21 that when the claim is made, if they've been seeking medical attention or if the date of accident is identified, let's say, at any point of time more than six months before the reporting, that they'd be denied. So it's not just a situation that the bill doesn't address RSI, but it in fact will make life more difficult for RSI sufferers in this province.

We recommend that the board hire some ergonomists. There is no ergonomist presently employed at the London board.

Finally, very quickly, we can see absolutely no possible justification for the elimination of the Occupational Disease Panel. If the government were truly concerned about health and safety matters, they obviously would not be eliminating the Occupational Disease Panel. Employers cannot make their workplaces safer if they don't have the information necessary to do so. We urge the government to restore the Occupational Disease Panel.

**The Chair:** Thank you very much. We appreciate your taking the time to prepare your brief and to present your ideas before the committee today.

## EMPLOYERS' ADVOCACY COUNCIL, LONDON CHAPTER

**The Chair:** I now call upon representatives from the Employers' Advocacy Council, the London chapter. Good evening. Welcome. Please introduce yourselves for the record, and you then have 20 minutes in which to make your presentation or to allow for questions.

**Mr Don Whiteford:** My name's Don Whiteford. I'm on the executive council of the London chapter of the Employers' Advocacy Council.

**Ms Jo-Ann Zomer:** My name is Jo-Ann Zomer, and I'm also on the executive.

**Mr Whiteford:** The Employers' Advocacy Council, EAC, is a non-profit volunteer organization of employers across Ontario. Our mission remains "to reduce employers' workers' compensation costs by influencing constructive change to workers' compensation in Ontario and through education of employers on all aspects of workers' compensation and workplace health and safety."

The London chapter of the EAC welcomes the opportunity to comment on this important legislative initiative and endorse the government's foresight in recognizing the necessity for reform.

The EAC of London represents a broad cross-section of our local economy and employer community. Our 120-plus membership consists of small businesses employing less than a handful of employees, to large multinational organizations employing thousands. We also have many public sector employers and employers from schedule 2. All these employers have come together under the membership of the EAC to voice their shared concerns about the viability and the cost of the workers' compensation system in Ontario.

For the past 12 years the EAC has attempted to develop solutions and alternatives that are both constructive and achievable. We have participated on all the advisory groups and committees established by the Workers' Compensation Board and the government concerning workers' compensation issues.

Under the Liberal government in the late 1980s, the EAC participated in the green paper advisory committee. In 1992, the EAC represented the employer community on the bipartite steering committee of the chair's task force on vocational rehabilitation and service delivery. When the New Democratic government in 1993 formed the Premier's Labour-Management Advisory Committee, the EAC played a key role in developing the business steering committee proposals on workers' compensation reform. The EAC also played a lead role in the business community by voicing the employer community's concerns with respect to the implementation of Bill 165 by the New Democratic government.

It is our view that this government is committed to restoring the viability and the integrity of the Ontario workers' compensation system. The EAC wishes to reaffirm its commitment to work with the government and the WCB to improve the workers' compensation system. We are of the opinion that Bill 99 will benefit both the workers and

employers of Ontario through accident prevention. We resolutely support the continuation of an affordable and viable system of workers' compensation that protects both employees and employers from the impact of workplace accidents.

The EAC wishes to ensure that the changes implemented are durable and in the interest of improving the entire system. The consensus of the Employers' Advocacy Council membership is one of support for Bill 99 with specific changes. We are of the view that the constructive comments and recommendations that we propose will add to the overall effectiveness of this reform.

The London chapter had a number of concerns, and we're going to deal specifically with three if we have time.

The initial one was section 42, the labour market re-entry plan, which is found on pages 14 to 17 of our formal submission. The Employers' Advocacy Council has several questions in reference to Section 42 of Bill 99. To some of our membership this particular section is a black hole and in their opinion may just be another name for vocational rehabilitation.

Identified as a major concern is the lack of uniformity in wording with sections 40, 41 and 42.

Specifically, clause 41(4)(b): "offer to provide the worker with alternative employment of a nature and at earnings comparable to the worker's employment on the date of injury."

What determines comparability? "Comparable" has been defined as "equivalent," "corresponding," "equal," "as good as," "alike," "akin," "similar," "proportional," "analogous."

EAC proposes that comparable earnings be identified in board policy as those that would remunerate at a percentage not less than 85% of the pre-accident earnings.

Second, "if the worker's employer has been unable to arrange work for the worker that is consistent with the worker's functional abilities and that restores the worker's pre-injury earnings."

This section states that an employer must restore a worker's pre-accident earnings and is inconsistent with clause 40(1)(b) and 41(4)(b).

Subsection 42(1) reads:

"If any of the following circumstances exist, the board shall decide whether a labour market re-entry plan for a worker is to be prepared:

"1. If it is unlikely that the worker will be re-employed by his or her employer because of the nature of the injury or for another reason.

"2. If the worker's employer has been unable to arrange work for the worker that is consistent with the worker's functional abilities and that restores the worker's pre-injury earnings.

"3. If the worker's employer is not cooperating in the early and safe return to work of the worker."

EAC proposes that Section 42(1) be amended to read:

"The board shall, after notice of accident, and in a timely manner, in consultation with the employer and the injured worker determine if a labour market re-entry plan



is to be prepared. All determinations shall be made within a six-month period."

1840

The EAC proposes that a labour market re-entry plan be contingent upon any of the following:

(1) If it is unlikely that the worker will be re-employed by his or her employer due to the nature of the injury, notwithstanding an employment or economic situation that would subject employment to layoff.

(2) If the worker's employer is unable to arrange suitable work that is consistent with the worker's functional abilities and that restores an earnings base of no less than 85% of the pre-injury earnings.

(3) If the worker's employer is not cooperating in the timely and safe return to work of the worker.

Subsection 42(4) reads:

"The plan must provide for such steps as may be required to enable the worker to re-enter the labour market and to reduce or eliminate his or her loss of earnings from the injury."

This section does not appear to have the corresponding monetary obligations as imposed on an employer. If an employer is required to provide suitable employment that restores the injured worker's earnings, then the LMRP should provide the identical monetary benefit.

EAC has additional concerns in relation to the terminology "reduce or eliminate his or her loss of earnings from the injury." If an employer can provide suitable employment, consistent with the functional abilities of the worker, but cannot restore the pre-accident earnings, will the LMRP kick in immediately? If so, will the plan eliminate or reduce the loss of earnings as a result of the injury or restore the pre-injury earnings?

EAC proposes the following criteria to determine who is eligible for labour market re-entry plan: an accepted disabling claim; cannot return to regular work as a result of the injury.

EAC proposes the following criteria to determine who is not eligible for labour market re-entry plan: no significant permanent impairment; accident employer can provide reasonable and suitable employment which pays 85% or more of pre-injury earnings; failure to cooperate or provide pertinent information; LMRP will not be prepared for claimants over age 65.

EAC proposes that the LMRP be limited to 18 months inclusive and provided on a one-time basis only.

A subsequent concern in terms of subsection 42(4) is the use of the word "enable" when paragraphs 2 and 4 of section 1 of Part 1, "Interpretation," use the word "facilitate." It is our opinion that these words have distinct meanings that may not be consistent with the intention of the legislation: eg, "enable" is defined in Webster's New Revised Dictionary as "to supply with the means, knowledge, or opportunity"; "facilitate" is defined as "to make easier."

Subsection 42(5) reads:

"The board shall consult with the worker and may consult with the worker's health care practitioners and employer in preparing the plan."

EAC totally disagrees with the premise that the employer may not be consulted in preparing a labour market re-entry plan. If the employer is required to fund the plan, they have every right to be consulted and updated on the success or failure of the plan.

EAC proposes that subsection 42(5) be amended to read:

"The board shall consult with the worker and the employer and may consult with the worker's health care practitioner in preparing the plan."

EAC requires clarification concerning the measurement of fully implemented LMRP. What criteria will be used to determine when the LMRP is fully implemented? For example, if an LMRP requires that the worker return to school to upgrade his or her skills to facilitate his or her return to employment, has the LMRP been fully implemented, or does "fully implemented" intend that the worker has acquired suitable employment within this same 18-month time period?

It is the opinion of the Employers' Advocacy Council that a fully implemented LMRP restores the injured worker's ability to return to work. EAC proposes that the board establish a policy statement clearly indicating that a fully implemented LMRP does not guarantee employment.

Another concern we have is subsection 22(2), which reads:

"Effect of non-compliance

"If the person fails to comply with subsection (1), the board may reduce or suspend payments to him or her while the non-compliance continues."

EAC proposes that if the person fails to comply with subsection (1), the board shall suspend payments to him or her while the non-compliance continues. Benefits will be reinstated and payable from the date of compliance, unless the claimant demonstrates it would be unjust to do so.

Finally, section 32, "Definition":

"In this part,

"health care" means.

"(a) professional services provided by a health care practitioner,

"(b) services provided by or at hospital and health facilities,

"(c) drugs,

"(d) the services of an attendant,

"(e) modifications to a person's home and vehicle and other measures to facilitate independent living as in the board's opinion are appropriate,

"(f) assistive devices and prostheses,

"(g) extraordinary transportation costs to obtain health care."

Members of the EAC are concerned re the inclusion of non-regulated professions, eg, massage therapists, social workers etc. Some professions are not regulated by law, but many have voluntary professional bodies. Some of these voluntary bodies provide certification courses and

registration, which may be valuable to get work in the profession. However, membership in these professional bodies is not mandatory. Our concern is one of quality and accountability. EAC proposes that the WCB establish policies that assign limitations on unregulated health care practitioners.

As I stated at the beginning of our presentation, I am presenting the views of the membership of the London chapter of the Employers' Advocacy Council. I do so in the spirit of continuous improvement to a system that, in principle, was designed to benefit both employers and their employees by reducing the impact of workplace accidents.

It is our opinion that all stakeholders must work together to fulfil this mutual goal. On behalf of the membership of the London chapter, I thank you for your attention.

**The Chair:** Thank you very much. There is about three minutes remaining for questions, so we'll go to the Liberal caucus only.

**Mr Patten:** Three minutes only.

You've done a fair amount of work on this. I have three or four questions, quickly. You said at the beginning, "We are of the opinion that Bill 99 will benefit both the workers and employers of Ontario through accident prevention." I've asked this question three or four times, and I don't know if you've heard other presentations here today. What, in your opinion, does this bill do in terms of supporting prevention of injury in the workplace?

**Mr Whiteford:** I think it brings the health and safety issues into the fold of the Workers' Compensation Board. Much like the presenter previous to us, there has not been that contact between the health and safety associations and the Workers' Compensation Board. I think it lends itself to open the communication levels more directly.

**Mr Patten:** All right. You've put down, "If the worker's employer is not cooperating in the timely and safe return to work of the worker." Would you elaborate a bit on "timely"?

**Mr Whiteford:** We're not only interested in returning injured workers to work as soon as possible, but when it's

most safe for them to come back to work. That's what "timely" specifically refers to: when, in a rehabilitative sense, it's time for them to be back at work.

**Mr Patten:** In this context, it could be read in pejorative fashion, though. In other words, if it said, "is not cooperating in the safe return to work of the worker," you'd have another criterion on which you need to make a judgement. Presumably, that is part of the discussion that I imagine happens today about when someone should be returning to work, and that is through the advice of health professionals for that to take place.

Then you had under subsection 42(5) consultation with the employer. It could be read that there need not be any consultation. Actually, on that one I agree with you that obviously the employer should be part of a return to work. They have a major role to play and if they are feeling their nose is out of joint and that they haven't been consulted, for whatever reason, that would probably be a mistake. On that one, I would agree with you.

The last point you made in your report was: "...courses and registration which may be valuable to get work in the profession. However, membership in these professional bodies is not mandatory." A number of professions are self-regulating and are recognized, and that provision could be made, that in order to be recognized and used by the WCB — of course it's going to have a new name — they would be members of their professional body, with the ethical obligations that go along with that, for their profession.

**The Chair:** Thank you very much for your presentation. We appreciate the detail you've outlined for us. Thanks again.

Colleagues, that concludes our last presentation for today. I would just draw to your attention the fact that Mr Christopherson has filed a request for some research information. I think you have a copy of that letter. With that, we stand adjourned. We'll reconvene tomorrow morning at 9 o'clock.

*The committee adjourned at 1852.*





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Legislative Research Service



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London Regional Advocates Group .....	R-2259
Ms Sue Green	
Ms Jody Jones	
London Health Sciences Centre .....	R-2262
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## **Legislative Assembly of Ontario**

First Session, 36<sup>th</sup> Parliament

## **Assemblée législative de l'Ontario**

Première session, 36<sup>e</sup> législature

# **Official Report of Debates (Hansard)**

**Tuesday 12 August 1997**

# **Journal des débats (Hansard)**

**Mardi 12 août 1997**

## **Standing committee on resources development**

**Workers' Compensation  
Reform Act, 1996**

## **Comité permanent du développement des ressources**

**Loi de 1996  
portant réforme de la Loi  
sur les accidents du travail**





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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
RESOURCES DEVELOPMENT

Tuesday 12 August 1997

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU  
DÉVELOPPEMENT RESSOURCES

Mardi 12 août 1997

*The committee met at 0902 in the Holiday Inn, Cambridge.*

WORKERS' COMPENSATION  
REFORM ACT, 1996LOI DE 1996  
PORTANT RÉFORME DE LA LOI  
SUR LES ACCIDENTS DU TRAVAIL

Consideration of Bill 99, An Act to secure the financial stability of the compensation system for injured workers, to promote the prevention of injury and disease in Ontario workplaces and to revise the Workers' Compensation Act and make related amendments to other Acts / Projet de loi 99, Loi assurant la stabilité financière du régime d'indemnisation des travailleurs blessés, favorisant la prévention des lésions et des maladies dans les lieux de travail en Ontario et révisant la Loi sur les accidents du travail et apportant des modifications connexes à d'autres lois.

**The Chair (Mrs Brenda Elliott):** Good morning, everyone. Welcome to the standing committee on resources development conducting hearings on Bill 99. Just to let you know, we have requested more chairs to be brought in and they'll be arriving very shortly.

The committee is pleased to be here in Cambridge this morning and we welcome our first presenter, the employers' advisory council representative. Would you come forward, please.

**Mr David Christopherson (Hamilton Centre):** Point of order: Once again we are in one of the six days of hearings, totally inadequate to deal with a bill of this magnitude, and once again I move that this committee unanimously agree to recommend to the government and the other House leaders that these hearings be extended, that there be proper consultations and that injured workers across the province of Ontario be given an opportunity to be heard in all of the cities in which they're to be heard in.

**Mr Richard Patten (Ottawa Centre):** I'll second the motion, by the way.

**The Chair:** Thank you, Mr Patten. As you know, this committee operates under the agreement from the House leaders, but do I hear unanimous consent for such a motion? No, there is not unanimous consent.

EMPLOYERS' ADVOCACY COUNCIL  
CENTRAL ONTARIO CHAPTER

**The Chair:** We'll move forward then to our first presenters. Welcome. If you would introduce yourselves, please, for Hansard. You have 20 minutes in which to make your presentation and you may or may not allow time for questions in that time.

**Mrs Sherri Helmka:** Madam Chair, I would just like to correct you. It is the Employers' Advocacy Council, the central Ontario chapter.

**The Chair:** My apologies.

**Mrs Helmka:** My name is Sherri Helmka. I am the executive director of the Employer's Advocacy Council. With me today is Jane Adams, who is the provincial vice-chair and the central Ontario chapter chair as well.

The Employers' Advocacy Council appreciates the opportunity to participate in the discussions of Bill 99. It remains very evident to each and every one of us that the need for reform of the Ontario workers' compensation system has been generally accepted. Previous governments have undertaken initiatives of reform, but it is our view that this government is committed to restoring Ontario's workers' compensation system to an affordable and viable system that provides protection for employees and employers impacted by workplace accidents.

The EAC was founded in 1985. It is a non-profit volunteer organization of employers across Ontario. Our mission is very simple. It is to reduce employers' workers' compensation costs by influencing constructive change to workers' compensation in Ontario and we do that through the education of employers on all aspects of workers' compensation and workplace health and safety.

We have over 1,700 members in nine regional chapters across Ontario and the EAC represents a broad cross-section of Ontario's diverse economy. Our members include small businesses employing less than a handful of employees and large multinational organizations. We also have many public sector employer members and employers from schedule 2.

All of these employers have come together under the membership of the EAC to voice shared concerns about the financial viability and cost of the workers' compensation system, frustration and a lack of confidence in the system and a common desire to effect constructive and sustainable change.



The membership of the Employer's Advocacy Council welcomes reform in the area of workers' compensation financial accountability and endorses the government's foresight in recognizing the necessity for reform.

The EAC publicly affirms our commitment to work with this government and the Workers' Compensation Board to improve the workers' compensation system for the benefit of employers and their employees. It is the view of the EAC that Bill 99, with changes, offers a reasonable solution not only to the problems of the past but to the expectation of the future.

EAC is disappointed, however, by the obvious omission of a new definition of accident. It is our opinion that the government may lose the opportunity to fix the system if this basic issue is not addressed. The Common Sense Revolution's six steps to solvency for the WCB stated: "The definition of 'accident' will be redefined to ensure that injuries are directly traceable to the workplace," and the 12-point Witmer plan stated: "Redefine 'accident' to ensure that compensation is awarded for workplace injuries only."

We are aware of the government's concerns of uncertainty and the possibility of additional litigation. However, this has been a long-standing Progressive Conservative Party promise and we urge you to fulfil that commitment.

0910

EAC is also disappointed that the three-day waiting period appears to have been shelved. We understand the concerns of the minister and the government; however, this is common practice in any insured or self-insured short-term disability, sickness and accident or weekly indemnity plan. Most of these plans also include a provision to waive the waiting period if the individual is hospitalized the first day. The EAC suggests that all employees be treated equitably in any wage loss insurance scheme.

**Mrs Jane Adams:** The EAC supports the incorporation of prevention of injury and/or disease within the new act and we strongly endorse the establishment of a health and safety advisory council. We anticipate that the government will examine thoroughly and establish parameters of responsibility for enforcement and jurisdiction between the Ministry of Labour and the board in the area of prevention.

The EAC supports the exclusion of chronic occupational stress.

In regard to chronic pain, the EAC is still of the opinion that chronic pain should not be compensated. We believe that pain that persists beyond normal healing times or extends to other sites on the body without any apparent reason is difficult to link to a specific workplace incident due to its multicausal nature.

Having said that, if the government proceeds on this course, then the EAC proposes that chronic pain be defined under section 2 of the Workplace Safety and Insurance Act, and further proposes that the specified time restrictions be articulated within the act. Logic tells us that section 46(1), compensation for non-economic loss, would not be applicable, as there would be no permanent impairment.

The EAC resolutely supports section 21(5), consent re functional abilities. If employers are to be compliant with the act, then this information is critical in providing suitable employment so that the employee can return to their job and workplace.

Members of the EAC are concerned regarding the inclusion of non-regulated professions; for example, massage therapists, social workers etc. Some of these professions are not regulated by law, but many have voluntary professional bodies. Some voluntary bodies provide certification courses and registration, which may be valuable to get work in the profession, however membership in these professional bodies is not mandatory. The concern of the EAC is quality and accountability. EAC proposes that the WCB be required to establish policies that would assign limitations on unregulated health care practitioners.

The EAC supports section 36 and further proposes that subsections 36(1), (2) and (3) be included under section 117.

In reference to the labour market re-entry plan, membership of the EAC have described this as a black hole and just another name for vocational rehabilitation. It is our opinion that sections 40, 41 and 42 embody the integrity of the reform process and in order to achieve the desired outcomes all the major stakeholders must partner. It is our opinion that the board cannot have discretionary powers over whom it will consult with in the development of a labour market re-entry plan. Of further concern is the general vagueness, clarity and lack of consistency throughout these sections. These are outlined in our comprehensive brief.

The EAC supports the benefit reduction to 85% and concurs with the modified Friedland formula in regard to indexation. Bill 99 takes commendable steps to correct the unintended overcompensation problems within the current act, most notably the future economic loss awards. The removal of future economic loss awards is a welcomed change. It is our opinion that they were mismanaged from the beginning, with inconsistencies that often treated employers and workers unjustly. These awards were locked in for years and some workers ended up earning more than was anticipated at the time their FEL was calculated. In some cases these workers enjoyed a combination of earnings and benefits greater in total than their pre-injury earnings. Clearly this was not the purpose of the workers' compensation system, and the EAC endorses the right of the board to revisit the level of benefits being paid to a worker upon a material change in circumstances.

The EAC supports the establishment of a second injury and enhancement fund and a disaster fund to protect employers from events that are beyond their ability to either predict or financially manage. Section 95 of the bill is ambiguous on the particular issue of a second injury and enhancement fund. SIEF is synonymous with equity, and EAC proposes that the act specifically refer to the second injury and enhancement fund.

The EAC supports time limits for appeals.

EAC supports in principle the direction contained in Bill 99 for the WCB-WCAT relationship. It is our opinion

that the WCB board of directors is responsible for running the Workers' Compensation Board and that it is essential to the successful running of the WCB that the board of directors make decisions with respect to policy.

While we agree that WCAT is bound by board policy, we are concerned that the employer and worker community may not have a mechanism available to request that the board of directors review a specific policy. The immediate problem that the stakeholder community faces is a lack of consultation with the Workers' Compensation Board.

It is the opinion of the EAC that WCAT's duty is to ensure fairness in the application of board policies. If there is doubt whether there is a board policy, then WCAT can request that WCB certify which policy applies in a particular appeal situation. If the WCB certifies that a policy exists, then WCAT will be bound to follow it in making its decision. If a matter is referred to WCAT and it is determined that there is no board policy, it is the position of the EAC that the tribunal should have every opportunity to decide the matter; however, the decision shall not stand as law unless it is specifically adopted as a board policy.

In the interests of time, we suggest that the members of this committee take the time to review the proposals contained in our provincial submission.

In conclusion, on behalf of the 1,700 members of the Employers' Advocacy Council, we commend this government for its vision and courage in reforming Ontario's workers' compensation system. We have carefully reviewed Bill 99 and what we see being reflected has been our philosophy since the beginning. We encourage the members of this committee to take the time to read our submission carefully, and if further clarification is required, we would be more than pleased to answer any questions.

**The Chair:** Thank you very much. We have about two minutes remaining for each caucus for questioning, so that's time for brief questions and answers. We'll begin with the government caucus.

**Mr Bart Maves (Niagara Falls):** Thank you for your presentation. There's been quite a bit of discussion about the return-to-work provisions and functional abilities forms. We heard from a kinesiologist yesterday that the functional abilities forms would be essential in an employee and employer having a safe return-to-work program. Do you share that opinion? Is it possible to have a return-to-work program without contact with an employee?

**Mrs Helmka:** Yes, we share that. In order to accommodate an injured worker, or any worker for that matter, who has maybe been out with even a non-work-related injury, it's very important that the employer be aware of that worker's abilities. I don't think you could have a successful return-to-work program if you didn't know what your workers were capable of doing.

**Mr Maves:** We had a discussion yesterday in Windsor about subsection 40(5). It that the board "may" contact the worker and the employer about their return to work, and some suggested it should say "shall" so that the board

is involved in mediating. Also, subsections (6) and (7) talk about disputes. What role, in your view, should the board play in this return-to-work relationship?

**0920**

**Mrs Helmka:** Probably a role of support, in supporting both the injured worker and the employer to achieve the ultimate goal, which is to return them to the workplace.

**Mr Maves:** Are there times perhaps when the board being involved wouldn't be necessary — for instance, a very short absence when the person goes back to their job right away — or other times where they should indeed be involved?

**Mrs Helmka:** If an employer has a good return-to-work program and is proactive, I don't think there's any need for the board to participate. There may be other employers that are not as proactive and are dragging their feet a little bit, and that maybe the board needs to be involved there in encouraging.

**Mr Patten:** Good morning. Thank you for coming today. We heard from your sister organization yesterday in — where were we yesterday? — London, and I think in each community we've been to.

Yesterday, for example, the point about chronic occupational stress came up. What I'd like to ask you is, I gather you have some trouble with the identification of what you consider to be legitimate cases. Let's assume there is a legitimate case of chronic stress, or chronic pain rather. Do you feel it's important for the board to continue to work on finding ways to be more specific to authenticate cases, or do you feel it should be left out of the legislation completely?

**Mrs Helmka:** Are we talking stress or are we talking chronic pain?

**Mr Patten:** Actually, either one.

**Mrs Helmka:** We feel that the board needs to define what chronic pain is and include it in the definition section of the act and perhaps take a look at the Nova Scotia model, where there are some time restrictions, normal healing times etc.

**Mr Patten:** I've read it and it seems to me it's a contradiction. Chronic pain is something that is persistent. Normal healing time in a sense is an absurd concept because, as we've heard testimony here, it's abnormal pain. It's a disability that persists. As each person reacts to different circumstances, each person is of a different age, each person is of a different strength, people respond differently and therefore you can't categorize the whole thing and say, "All people will by six months be finished this particular injury."

**Mrs Helmka:** Then how can you categorize that chronic pain should be compensable? How do you know it's strictly arising out of and during the course of employment?

**Mr Gilles Bisson (Cochrane South):** How do you know it's not?

**The Chair:** Order, please, Mr Bisson.

**Mr Patten:** We had some suggestions yesterday by a couple of medical researchers. I grant that perhaps it has been difficult heretofore, but I suggest that more and more



it's being demonstrated that it is clinically justifiable and that what we need to do is be far better at being able to identify medically and clinically the source and the nature of the particular pain and how it disables people. Anyway, I had one other — do I have time?

**The Chair:** No. I'm sorry.

**Mr Bisson:** I'm most intrigued by your comments around WCAT and your suggestion that we should not allow WCAT to set board policy. I come from Timmins. Timmins is a mining community, pulp and paper area. There's a very large industrial base. Prior to my election in 1990 I was very involved in working to try to get justice for diseased miners who had contracted diseases from working underground, specifically lung cancer. What happens with these people is they die. This is not a joking matter. They just die. They go and work underground, they get diseased and they die. Often they leave families behind who don't have the economic means to be able to make ends meet. I can tell you story after story after story of mothers who had to raise families on their own with no assistance whatsoever.

In the end we won our fight with the Workers' Compensation Board to get lung cancer accepted as an industrial disease because WCAT had the ability to take a look at the issue from a scientific perspective and to make a decision and say, "Yes, there is a relationship between these people having worked underground and these people having contracted lung cancer."

I further suggest that if WCAT did not have the ability to do so, never in a dog's age would there have been any movement by the Workers' Compensation Board to accept lung cancer as an industrial disease, and all of these widows and some of the lucky survivors who haven't died yet would not be getting WCB benefits and their families would be without.

I want to have one question. I still have an ongoing relationship where I deal with the victims of the mining environment. I want to hear from you, because I'm going to go back and tell them: What do you want me to tell the widows who would not get WCB benefits as a result of your idea that we remove WCAT from making policy? What do you want me to tell the widows in Timmins?

**Mrs Helmka:** I don't think you understood what I said.

**Mr Bisson:** I understand very well. I fought this thing for five or six years, and I'll tell you, I will not stand back and watch you people railroad justice away from the victims of the mining environment in the city of Timmins. If I have to fight this thing, I will, let me tell you. I don't appreciate you saying you're going to take away justice from people who have been diseased because they only went to work in the morning and died because of their actions.

**Mrs Helmka:** What we said was that we agreed that WCAT should be bound by board policy, but if there is no board policy — and come on, you know just as well as I do —

**Mr Bisson:** I know very well because these people died and we couldn't get justice. The only way we did is

when WCAT was able to set policy when the board was unwilling to do so. That's how it works.

**The Chair:** Mr Bisson, kindly let the witness answer the question.

**Mrs Helmka:** You also know that WCAT can look at the real merits and justice of the case as well.

**Mr Bisson:** And if you don't have the policy, they can't rule in favour of the victim. That's the point. You have no idea. What am I going to tell the widows in Timmins? I want to know.

**The Chair:** Mr Bisson, do you want the witness to answer the question or not?

**Mr Bisson:** Yes. What am I going to tell the widows?

**The Chair:** Then please allow the time to answer the question.

**Mr Bisson:** I want to know what I'm going to tell the widows.

**Mrs Helmka:** It is the position of the Employers' Advocacy Council that the board —

**Mr Bisson:** We know the position of the employers: They wouldn't pay. They kept on barring justice from these people. What do I tell the widows?

**The Chair:** Thank you. We're going to conclude this presentation. Thank you very much for taking the time to come before us this morning with your advice. We appreciate it.

#### INJURED WORKERS GROUP OF BRANT COUNTY

**The Chair:** I'm now calling presenters representing the Injured Workers Group of Brant County.

**Interjection:** Perhaps, Madam Chair, we could get more chairs so the injured workers could sit down.

**The Chair:** Sorry. There have been more chairs ordered.

Good morning and welcome. If you would introduce yourself, please, for Hansard, you have 20 minutes in which to make a presentation.

**Mr Ian Aitken:** Good morning, Madam Chair. My name is Ian Aitken. I'm a lawyer at the Brant County Community Legal Clinic. I'm here on behalf of the Injured Workers Group of Brant County, based in Brantford, to present some of their concerns regarding Bill 99 based on our experience at the clinic and on their experience. I will comment briefly on three areas that they are particularly concerned with: de-indexation of benefits, return-to-work provisions under the bill, and the general appeal process and WCAT.

I don't think it should be a shock to anyone that injuries in the workplace cost money. There have to be benefits for workers while they recover, and vocational assistance to ensure they return to appropriate and sustainable work. Bill 99, in our view, will remove existing protections and force injured workers to make enormous sacrifices. The proper approach to reducing compensation costs is to reduce accidents and improve return-to-work opportunities and vocational rehabilitation. Instead, this bill reduces

benefits and will increase the numbers of injured workers inappropriately forced off workers' compensation benefits.

The first concern is de-indexation. The bill is going to reduce cost-of-living adjustments to the majority of injured workers, including pre-Bill 99 workers. It is grossly unjust, in our view, to de-index existing benefits to permanently disabled workers, many of whom the board has agreed cannot return to work or cannot restore their pre-accident earnings.

**0930**

Return-to-work provisions are probably the most important issue to the majority of injured workers in our experience. In our view, one of the most disastrous proposals in the bill is the removal of vocational rehabilitation services. Although we will admit, having dealt with VR departments and case workers, it's not a perfect process, in our experience case workers and workers' compensation vocational rehabilitation have provided some protection during returns to work. With temporary benefits and vocational rehabilitation services eliminated, workers are going to be cut off benefits on the basis of work that is not suitable or even available even when the worker is involved in a medical rehabilitation program. If that seems unfair or inconceivable, it's happening now. We have a number of workers in our experience, whom we're dealing with and representing, who have been cut off benefits while they're involved in a medical rehabilitation program, and they have been cut off benefits on the basis of some illusory work that even the employer agrees is not available.

What we're going to see more often are two outcomes. One of them will be that an employer will offer modified work to an employee and the worker will be cut off even while in a treatment program when the job is not suitable. Also, injured workers will be cut off benefits by the board even when a job is not available.

Let me give you an example. A client who was injured and received conservative treatment for six months was assessed at a regional evaluation centre which recommended that he enter a chronic pain management program and be assisted in returning to alternative different employment. At that point, the adjudicator determined that he was fit for the essential duties of his pre-accident employment and cut him off benefits and refused to provide him with vocational rehabilitation assistance on the basis that there was a job available and that he was able to go back to it. The employer confirmed that there was no job available, modified or otherwise.

At the same time, the board recommended and placed this worker in a chronic pain management program but refused to provide him with any assistance; they simply paid for the program. The adjudicator was not able to tell me how this worker could earn his pre-accident wages at a job that didn't exist while he was attending the pain management program on a full-time basis. This injured worker has been receiving welfare assistance for approximately nine months.

As I mentioned, several of our clinic's clients have been placed in this impossible situation. The important

thing to remember is that injured workers do not disappear when they are wrongfully cut off workers' compensation. They're forced on to welfare, EIC, Canada pension plan disability. Their lives and the lives of their families are often irreparably damaged.

From our recent experience, the culture shift at the Workers' Compensation Board that Glen Wright has talked about is essentially a shift away from the basic principles of workers' compensation.

We have very clear concerns about the appeal system, the limitation periods and particularly the requirement that WCAT follow board policy. It seems clear that the limitation periods, particularly the 30-day limitation periods with respect to return to work, are going to increase litigation and appeals and will increase the pressure on an already backlogged appeal system. In particular, the requirement that WCAT follow board policy will remove WCAT's independence and destroy the credibility of the entire appeals system.

In the example I gave you earlier where the worker was cut off benefits, the board is following a board policy — I haven't been able to find it, but some board policy. The remedy is to go to WCAT and ask WCAT to follow the act in this worker's situation. If WCAT no longer is able to do that and has to follow board policy, there's no remedy for this injured worker within the system. We'll have to go outside the system into judicial review, and that's going to increase costs and uncertainty of the system for all of the stakeholders.

In summary, Bill 99 disregards the contribution that injured workers have made to the economy of this province and will severely limit the opportunities for those same workers to continue to contribute. In our view, Bill 99 will doom another generation of injured workers to poverty and despair.

**Mr Pat Hoy (Essex-Kent):** Good morning and thank you for your presentation. We have heard during the hearings that most, if not all, employees would rather not be on workers' compensation and find it difficult to deal with; 100% of them would rather be working.

In your description of the particular case you were talking about where the person was on welfare for nine months, is this an aid to his or her mental state, to go from WCB to welfare?

**Mr Aitken:** It doesn't help his mental state; it doesn't help his physical rehabilitation. The constant concern and the constant lament of injured workers in our experience is: "Get me back to work. Give me a job where I can earn a decent wage, where I can contribute again."

I am always astounded. I have been, in my experience, in the unfortunate situation where workers have worked for 15 or 20 years for an employer, they don't miss time, they contribute, and then they become injured. In an instant they go from a productive, valuable employee to some sort of fraud artist who is trying to rip off the system. They just want to go back to work. Injured workers just want to get back to safe work so that they can contribute.



**Mr Hoy:** Believe me, I anticipated that your answer would be that people are not looking forward to moving on to the welfare system, particularly in light of the fact that welfare has been cut by 22%.

You talked about imagined employment in your presentation, and then you talked about imagined board policy. In this particular case you were talking about how you couldn't find any policy that had the client you were talking about not receiving benefits. This to me is extraordinary, that we have two imagined possibilities here: the imagined possibility of potential work and imagined board policy. It seems to me quite clearly that we have great difficulty in this case and others that would be similar. I find this extraordinary, and certainly your presentation will help us to improve workers' compensation. Clearly Bill 99, in your opinion, is not going to improve it in that regard.

**Mr Aitken:** Absolutely not. As lawyers, when a decision is made, we appeal it. That's what we're doing in that particular case and in other cases. But as an individual, I have concerns about the entire system, and with the changes that are proposed in this bill, particularly about return to work, I think we're going to see more and more of these instances.

Again, there has always been an understanding, I think, with all stakeholders, employer reps and injured workers' reps, that you can go to WCAT. Without that safety valve there the entire system is going to lose credibility, and that was one of the points I wanted to illustrate.

0940

**Mr Hoy:** In regard to the de-indexing of benefits, do you know of anyone in the country who can adequately predict what the inflation rate might be two years from now, six months from now, 10 years from now?

**Mr Aitken:** I'm not aware of anyone, no.

**Mr Hoy:** What I'm leading to here is that the possibility exists where inflation may become very much higher than it is today. Our inflation rates in the country are very low, so by de-indexing, would we not be putting injured workers in jeopardy, potentially, in the future?

**Mr Aitken:** Regardless of the inflation rate, some of the statistics I have seen, even with a 4% inflation rate over the next 17 years, show there's going to be a drastic reduction in the ability of injured workers to continue to live, a reduction of I believe 51% of their earning power. Whether there's a huge increase or just minimal inflation, this de-indexation is going to take a lot of money out of the pockets of injured workers and it's going to drastically affect their standard of living. These are people who the board has accepted are disabled. They are given benefits that in our view are just sufficient, or not sufficient, and yet we're going to see further de-indexation. These people, many of them, just can't go back to work, and that's been accepted by the board, so they're essentially defenceless. They can't go out and get another job. That's our concern.

**Mr Christopherson:** Thank you very much for your presentation. We've heard from other lawyers representing injured workers that the net effect of all the changes the government is making will indeed show down the road

that statistically there are fewer injured workers. But the reality is that there will not only be just as many injured workers but more of them. They just won't be inside the WCB system. Would you agree with those other lawyers who have made those submissions, and if so, why?

**Mr Aitken:** Based on our experience and looking at the potential effects of these amendments, I think that's a likely outcome. What will happen is that workers who are injured on the job will be enticed not to report the injury to the board. In some cases that might work out, if it's a very minor injury, and they'll be able to return to work and everything will work out. Our concern is, following up the rest of your question, that will reduce the actual numbers of reported accidents, and I think that will be an illusory gain. The conclusion that this means there are fewer workplace accidents will probably not be correct.

Our concern is, and this was a discussion I had last evening with the injured workers' group I'm involved with, what happens if you get injured at work and you're enticed not to report it and then six or seven months later that injury that was not reported crops up again or becomes more serious for whatever reason? What do you do then? Some of these workers asked me, as a lawyer, and I said: "I think you're in a lot of trouble because the six-month limitation period, which we expect will be much more strictly enforced, will probably prevent you from getting any compensation for that injury. You may be out of luck."

**Mr Christopherson:** I would suggest to you — and I don't know how comfortable you are saying this, but I am — that this is all by design. The government knows very well what it's doing in terms of taking the \$15 billion away from injured workers and giving \$6 billion of it back to their corporate friends. But in addition, by making these other changes with the WCAT — the time limits, those injuries that will no longer be compensable — at the end of the day this government is going to run around in a couple of years saying, "See, we've made the workplace much safer because there are fewer injuries," and they're going to offer up those numbers. The reality is that because the penalties are not as strong and employers are not on the hook as much as they were before, there's an incentive for them to do exactly what you're suggesting, and at the end of the day there will be more injuries because our workplaces are going to be more dangerous, not less dangerous.

**Mr R. Gary Stewart (Peterborough):** Thank you, sir, for your presentation. I have just a couple of questions. I assume that your client base is all WCB workers whom you're involved with?

**Mr Aitken:** The majority of my work is, yes.

**Mr Stewart:** How long does it take the average claim to be looked into and clarified and come to fruition? Any idea how long?

**Mr Aitken:** The average claim?

**Mr Stewart:** Yes.

**Mr Aitken:** I would have difficulty speaking about the average claim. The people who end up coming to our

clinic with workers' compensation matters often have already had a number of months without benefit.

**Mr Stewart:** In other words, the system is not working now is what I'm trying to suggest, and it hasn't worked for a long time.

**Mr Aitken:** I would agree that the system is far from perfect.

**Mr Stewart:** The other thing you said at the start was that the two keys to change were prevention and return to work. I assume you would agree with that?

**Mr Aitken:** Yes.

**Mr Stewart:** That's the priority and we believe that's the priority of this government as well. You made a comment that the particular client you had was cut off during the return-to-work phase and the labour market re-entry etc. I would say there are a lot of times when we have presenters and we don't get any recommendations, it's just, "No." But if you say no — anybody can say no — let's make some good, concrete recommendations and amendments might come out of that. What amendments would you suggest to clarify that injured workers will continue to get their full earnings during these particular phases? What types of amendments or recommendations would you suggest?

**Mr Aitken:** I think the current act is again far from perfect. The problem, and my particular concern and the concern of my constituents, is return to work. The important thing is to have the Workers' Compensation Board intervene and be required to intervene in return to work. That is the most important thing that should be in the act in terms of return to work.

As I said, it's far from perfect now, and anyone involved in the system will agree with that. But I remember reading the Cam Jackson report, and there is a statistic used in that report indicating that vocational rehabilitation services aren't working because only 50% of injured workers with permanent impairments return to work. But to me the reality is that that is an argument for more and more intervention through vocational rehabilitation services; that's not an argument to rip it out of the system, which is what we see happening here.

The argument that there are going to be better return-to-work outcomes by taking away vocational rehabilitation services is, in my mind, logically like saying, "We have many police officers in our community, and if we get rid of them maybe crime will go down." It just doesn't make any sense.

**Mr Stewart:** I think that's why we're concentrating on prevention. That's the priority and I think it has to be.

*Interruption.*

**Mr Stewart:** They can laugh all they want, but it happens to be a fact: We've got to prevent it before.

**Mr Christopherson:** Where is it in the bill?

**Mr Aitken:** I haven't seen —

**The Chair:** Sir, time has elapsed. I must interrupt; I'm sorry. We must call our next presenter to come forward.

**Mr Aitken:** I haven't seen anything in this bill and I haven't seen anything from this government that deals with prevention of workplace accidents. Show it to me.

**The Chair:** Mr Aitken, thank you very much for coming before the committee today. We appreciate it.

0950

## WATERLOO REGIONAL LABOUR COUNCIL

**The Chair:** I'd like to call representatives from the Waterloo Regional Labour Council, please. Good morning. Would you please introduce yourself and your guest for Hansard.

**Mr John Cunningham:** Good morning. My name is John Cunningham. My guest is my daughter, Jessica Cunningham.

Thank you for the opportunity to speak one last time on any bill, and on this occasion Bill 99, the bill of death. I invite questions when I am done, but please resist political statements as you have your own TV channel for that purpose.

Ontario's people are unaware that within days the Legislature will sit again. The Conservative introduction of changes to standing orders and "We've got a majority, so pound salt" attitude at August's close will outlaw official opposition and public input. The government will move to open public sector contracts, decide on ownership and membership in bargaining units and ram standing orders through, to name a few. This is not about unions, this is about basic rights and freedoms. This is one more coffin nail in democracy from a government that openly hates its own people.

Each Conservative bill has its devastating and destabilizing effect, and I come to forewarn of the lasting and monumental damage this Bill 99 brings to injured workers.

So what is left, or should I say right, if we can't present our dissent, our petitions are ignored and demonstrations are seen as either unsightly or amusing? Conservative-appointed ombudsmen and watchdogs are decrying the boondoggles and enforced anarchy of their own government. Will the police in Ontario, in this growing pressure-cooker, be forced to act on dissent? Dissent then becomes civil disobedience, with hardworking, respectable people, in desperation over loss of rights, deemed as criminals.

Business people who are standing up and cheering should remember that governments are not forever, and this government will find itself on the opposite side of the House, probably without official party status, wailing away about how unfair things are. How will you react if bills are forced through and you are not heard?

This bill, we are told, will make Ontario the safest place on earth, statistically. The reality is similar to the unemployment figures which don't count in people who stop looking out of frustration or who live over heating ducts in the winter. In the end, you will still have larger numbers of unemployed than you statistically present. With this bill, you will have fewer reported accidents but more dishonoured, disabled, disillusioned unemployed who are injured.



Conservatives say this bill will simplify the act, and after 17 months of writing by young academic assistants with no work experience, the opposite is true. The bill is supposed to be plainspeak versus legalspeak. The existing act has 151 sections and Bill 99 has 178 sections, with 27 new sections with no regulations written yet. The legal challenges on the new language for all parties, including business, will be astronomical — simplified, my foot.

I'm employed, with 1,100 others, at a tire manufacturing facility in Kitchener. My employer is very forward-thinking on most subjects of health and safety; they are backward on the subject of return-to-work, where we have tried unsuccessfully to negotiate joint return-to-work programs for more than a decade.

The Canadian Rubber/Plastics Industry Council health and safety committee has toured countless factories over the years and we have seen dramatic proof and despicable conditions proving that the majority of employers do not take safety to heart.

The year 1914 brought the historic compromise of no-fault compensation. Compensation was to replace a worker's wage when a accident or work-related disease befell a worker. Companies in return would not be held liable. Now ignoring that compromise, the government will insure us in case of an accident, not compensate us. "Compensate" is to make as whole as possible, or to quote the dictionary, "to recompense as equivalent for loss, injury, suffering etc."

The replacement of fair compensation and rehabilitation services by recovery and return to work is abhorrent. Bill 99's preamble to promote, educate, rain and foster commitment to health and safety shows that compensation is not a priority or commitment of the board. Under the Conservatives, injured people will be considered unsightly and the only concern is to rebate employers for transparent, flashy safety programs.

The point is that the only general mandated safety education in Ontario is WMHIS training. If you give workers continuing education and mandate joint health and safety committees, they will make Ontario the safest place in the world to work. Not all the bureaucrats or business managers in the world can do that.

There is no representation from labour on the board of directors to champion those functions anyway. You can guarantee that non-experts from business, via the trough, will tell workers all they cannot begin to know — statistically yes, but they don't have floor-level work experience.

In section 10, the board continues to refuse coverage to 700,000 currently uncovered workers who, if added, would help bear the cost as in British Columbia and dramatically reduce the premiums of those already paying. Those businesses now paying should insist on coverage for all, out of fairness and lower cost.

Section 12 retains the presumption that accidents arising out of employment are compensable, but in future, workers have a six-month deadline to file. Most diseases and many injuries are ignored by workers who try to work through the pain, or the original disease symptoms go

away very quickly, only to return years later. Those injuries will not be recognized by Bill 99.

Section 13 excludes benefits for chronic pain except for levels of normal healing times. Mental stress and chronic pain will be a challenge of the charter on the basis of discrimination against workers.

Section 21 requires workers to file and copy employers, where it was mandatory for employers to file and copy the workers. In many cases a worker may be diagnosed with a disease, but only months or years later understand that the disease was due to the nature of the employment. Previously, failure to file was not to a bar benefits, unlike the proposed "shall not provide benefits" today.

The employer abuse will be monumental: 24% of Canadians do not read or write at a grade 9 proficiency level. My experience is that people are terrified of the prospect of filling out any government form. Is the form to be printed in the 14 most common, major languages of the workplace today?

The worker's physician is now compelled, with the worker's forced consent, to supply medical information to the employer on the supposition that this information will help the employer be supportive in returning the worker to the job. The reality is that most employers will use any means at their disposal to return the worker to any job, and the floor line supervisor has no training, nor any concern, other than getting the product out. The result is further injury in a majority of cases.

I speak in unionized terms and we know that the unorganized, who are in the majority, will suffer from greater indignities and unrealized claim compensation from bad employers.

Section 34 demands that workers cooperate in health care measures which the board considers appropriate or lose full benefits. Can you imagine being told that you must have a lower back operation that has a 50% chance at failure, and even if successful will result in 30% less range of motion, or you could suffer from chronic pain, which will be disallowed, and retain a fuller range of motion as your choice? What would you do? At any rate it is my body, and any board or government has no right to make that determination for me.

Sections 36 and 37 force workers to a medical examination on the employer's demand. Could workers without representation object effectively? Everyone knows they could not. Physicians will be forced to hand over information without the worker's consent.

Section 40 encourages return to work over prevention. If workers break down or reinjure or suffer other injuries while trying to guard the original injury, you will gain nothing but a great and delayed cost. Our workers are already too familiar with those friendly psychological phone calls with a subliminal message whose only purpose is to return you to work regardless of your medical or mental state. This disregards the worker's physician's directives and ignores the meaning of disability.

We are coming to the time when the logic of quick return becomes an administrative fast-track of return that stretches every sound medical rationale. At some point the

worker is left by white-collars types and medical types to be placed in the hands of floor line supervision with no experience with medical restrictions. The most common thing that will be heard is, "I know you're hurting, but could you just do that?"

With doctors only receiving four hours of training in occupational medicine, what knowledge could supervisors have, or can we track the damage they'll do? Only mandated joint return to work, with the input of the worker's physician, has even a chance of succeeding.

Subsection 40(6) now involves the board in return-to-work disputes but leave the non-unionized worker out in the cold. The free hand this gives to employers through punitive return-to-work programs will force many out the door, into unemployment and eventually welfare.

#### 1000

In section 42 the labour market re-entry may be based on pre-accident earnings, and the good of the worker will not be recognized, nor his needs. More workers will be forced to cooperate in plans that will see thousands of workers deemed as parking lot attendants, regardless of their potential, drive, needs or feelings. Again, labour market re-entries are not meant to be motivational, only the cheapest Band-Aid remedy for today while ignoring tomorrow.

There is no mention of appeal or ability to renegotiate labour market re-entry. Old programs were designed to encourage the injured workers to be involved in their own future. While cost and expediency are always part of the decision, forcing people into job plans or medical operations is clearly the wrong direction in healing mind and body of their individual degrees of illness or injury. This bill is about money, not about compensation or reasonable compromise between the workplace parties.

In section 43 there is a direct loss of monetary benefit, 5%, to the injured worker. Looking through 19 pages of analysis of Bill 99 from the Office of the Employer Adviser did not show one single additional cost to the employer, only one mention of larger litigation.

In section 44 the worker was reviewed every two years. Now the demand will be every year for six years, with the obligation to report material change in that six years or face having your benefits cut off. What's a material change? Only your regulation writer knows, and they haven't written it yet. With the fraud provisions of Bill 99, the possibility of perpetual review is starkly present.

Section 45: Before the bill, 10% of every FEL award was set aside for purposes of pension. This government will cut this to 5%. These funds were for a time of life that is most vulnerable. Bill 99 is not about compensation. This is about poor insurance. This is a cheap, demeaning grab from the injured workers. This is theft, and you are bounders and rounders and a lot of dirty things.

You have left a provision for unionized to negotiate with the employer for top-up, leaving non-union workers out in the cold. Don't bother at the end of this brief to tell me the crimes of some past government. Stand and deliver on the effect of your own policies.

Section 48: Here comes the only compliment. The inclusion of bereavement counselling for the surviving spouse is a welcome addition and should include a timely explanation of benefits and time limits.

Section 49 contains a poorer indexing formula. This is not the meaning of compensation, when your benefits continually shrink.

In Bill 99, the templates of best practice have been removed while still reinforcing the experience/merit-rating programs. The regulation is not written and the giveaway continues. You have taken away 5% of the injured worker's temporary accident benefit, 5% of their FEL award for pension, reduced the indexing and slashed vocational rehabilitation to a "deemed" plan of smoke and mirrors. What did employers pay towards the big lie, the supposed unfunded liability?

The Conservatives are going to wipe out the unfunded liability, never to be seen again, right? Wrong. Subsection 93(2) states:

"Sufficiency of fund

"The board has a duty to maintain the insurance fund so that it is sufficient to make the required payments under the insurance plan as they become due."

There will continue to be an unfunded liability that you can fund when you need to pay it out. The Conservatives have skilfully used deception to appeal to that "Take a two by four and whack yourself in the head because it's good for you" mentality.

For the last time, the unfunded liability is a big lie to cement up the bill of death.

Section 114, the requirement of workplace parties to file a written notice of objection within 30 days on return-to-work and labour market re-entry plans is not reasonable for either party when all other appeals are six months. It's something like receiving notice to write this comprehensive brief in less than 11 days, interspersed with my normal duties and after my workday is done.

Section 123 offers mediation services where the board considers appropriate. Considering that the government has laid off all labour board mediators, this is inconsistent, and while somewhat desirable for the organized, it is very much another horror for the unrepresented.

Under section 171, the office of the worker adviser and the Office of the Employer Adviser will continue. The government reached out to say that the OWA could not represent unionized members but allowed the Office of the Employer Adviser to represent employers with a workforce of less than 100 with the added words of "primarily." Very few unionized workers have been represented by the OWA. In fairness, if the employer is a member of a trade or commerce agent, association or organization, the same restriction should apply. Employers then should not be represented. Are there no savings to be realized from employers, only workers?

We have seen the federal government moving to the privatization of food and drug testing, and now your government will disband the Occupational Disease Panel. We believe that business views this worldwide recognized authority as far too effective. This follows your govern-



ment's aim far too successfully. By recognition of disease, you can then prevent disease.

With Bill 15 and Bill 99 restructuring and renaming and privatizing the board, you must be done the job, right? Wrong. The future holds reviews of funding, new methods of payment by employers, better, richer experience-rating programs, transition and new regulations from the old act to the massive new act and, oh, yes, who and what workforces are covered by the act. We are sure that the "ram it through in four days provision" will come in real handy.

To the horror of all Ontarians, we find that according to the statistics released by the companies themselves, Ontario is the third-largest polluter in North America, next to Tennessee and Texas. In light of this news, the Conservative government is stripping environmental and employment standards and health and safety laws, raping health care, and merging whole communities with little input, ignoring history and civility and bastardizing the word and meaning of compensation to injured workers.

History will not record this as the golden age of enlightenment. Explain to my family that what you do is for the good of humanity and not your wallet. If this is indeed your revolution, make no mistake: Social conscience will return from its holiday. The Ontario that I remember cares about its own people. Your children may hide in shame and denounce you, and you, like Brian Mulroney, will be outcasts in your own country, all in the name of money.

Bill 99 reviewers reserved interpretation on the ongoing basis, because of the change to supposed plain speak, on the interpretation of the legislation and future policy when regulations are finally added. This means huge legal costs to all. Governments are in business to govern, not to be a business club. Many laws took decades to refine and are in place to protect the public from very real conditions, such as the greed and the uncaring attitude of others. Govern or get out of the House.

Ontario, we mourn for thee. Thank you, and thank you to Joyce Cruickshank, John Sweeney and my union.

**The Chair:** Thank you very much. There's time only for questions from one caucus, and it will be from the NDP.

**Mr Christopherson:** John, what a fantastic presentation. I think you've done a real service to the people you represent here today in terms of the outline you've done of Bill 99. I could stand in the House and deliver this speech and feel real good about it. I love barn-burner speeches. You did a great job.

The only thing I can think to possibly add is that if anyone doubts whether or not John is speaking the truth, just take a look at the fact that the Minister of Labour consistently stands up and says they want to be fair. They always want to be fair, fair, fair. Yet "fair" is the word they took out of the new Ontario Labour Relations Act and "fair" is the word they took out of the WCB Act, their new bill. They took the word "fair" out.

John, I can't think of a question to ask you except maybe give you a last 30 seconds to wrap up if you want, but I want to tell you, you did a great job here today and I

agree with every single word you said. Thank you so much for coming out today.

**Mr Cunningham:** The message I would give from my corner, which is organized labour, and for any workplace, and I deliver it to Mr Maves — I see he's sitting there; good day to you — is that if you do not have mandated powers on either side, whatever government sits, it's a pipe dream. You're only presenting your own opinion. It has to be mandated powers.

Again, if you do not educate through worker-designed training, it's a sham and a farce. Please return to that. Stop the short budgetary leashes that you have on the clinics and on the training delivery organizations. Stop that. Give them a future. Recognize the job they do. Don't disdain them. Let's get on with the job of being safe in Ontario

1010

## ONTARIO PHYSIOTHERAPY ASSOCIATION

**The Chair:** Our next presenters are representatives of the Ontario Physiotherapy Association. Good morning and welcome. If you would be so kind as to introduce yourselves for the Hansard record.

**Mrs Gloria Schmuck:** I am Gloria Schmuck. I am director of Link With Work in Kitchener. Link With Work is approved by the WCB as a regional evaluation centre and community clinic. A majority of our patients are injured workers whom we assess or treat through the WCB or on a direct employer-pay basis.

With me is Dorothy Borovich. Dorothy is the owner of Burlington Rehab Services. Of the patients treated at Dorothy's clinic, approximately 75% are motor vehicle accident victims and individuals covered through their individual insurance plans; the remainder are WCB clients in the community clinic program. Dorothy is one of those physiotherapists who no longer treat WCB clients in the regular WCB program, for reasons described in our submission and in our remarks that follow. Dorothy is in a particularly good position to compare and contrast the WCB and motor vehicle accident systems and is here today to help me respond to any questions you might have.

Last month we provided to the committee clerk copies of our formal submission on Bill 99. We are not going to repeat that submission. Instead we'd like to summarize the main points and leave as much time for questions as possible. For ease of reference, our recommendations are listed in pages 17 through 20 of our submission.

As we stated in our submission, physiotherapy is the principal rehabilitation profession for injured workers in Ontario, second only to medicine. Last year we assessed and treated approximately 53,000 WCB clients in either the regular program or the community clinic program, yet every year more and more physiotherapists are refusing to treat WCB clients. The reasons for this situation spring from the way in which the WCB operates and deals with injured workers and their employers, and with treating health care practitioners. We recognize that legislation

itself cannot change organizational behaviour, but we're very concerned not only that Bill 99 misses an opportunity to influence the WCB's behaviour but that Bill 99 may perpetuate or entrench past behaviour that has brought us to this situation.

The WCB is a monopoly, and acts like one. It dictates the fees that it will pay for treatments. It often overrules treating practitioners on the type or extent of treatment required to get an injured worker back to work. It is slow paying its bills to treating practitioners. It actively discourages communication among the treating practitioners and the employer that should actually be encouraged to expedite the injured worker's recovery and return to work, or at least return to modified work.

In our submission we have suggested you compare and contrast Bill 99 with legislation passed last year applying to the motor vehicle accident or MVA sector, Bill 59. Bill 59 seeks to regulate MVA insurers who function in a competitive market. The bill before you today relates not to a competitive market situation but to a monopoly. Yet Bill 59 provides more checks and balances to ensure fairness and equity in the treatment of motor vehicle accident victims than Bill 99 provides to injured workers. We ask why. Why does the government of Ontario think it more necessary to intervene in the private, competitive marketplace in the MVA sector than to put in place effective checks and balances to ensure that a monopoly, the WCB, handles injured workers fairly?

We also urge you to examine Bill 99 in the context of the privatization of some or many of the activities of the WCB. If, for example, case management is privatized by the WCB, is it right and proper to give private operators the power to dictate the level and type of care or to dictate the fees they would pay?

Our largest bone of contention with the WCB relates to subsection 50(1) of the current Workers' Compensation Act or subsection 33(1) of Bill 99. The two sections are essentially the same. I ask you to read subsections 50(1) and 33(1) and ask what they mean to you. What does it mean when section 33(1) says that the injured worker is entitled to make the initial choice of health professional? To us it means that if a worker is injured, that worker has the right to decide whether he goes first to his family doctor, his chiropractor, his physiotherapist or to another practitioner of his or her choice.

But that's not the way the WCB interprets either current section 50(1) or Bill 99's section 33(1). WCB policy says to the injured worker: "No. You may only go to a doctor or chiropractor in the first instance. If you wish to see a physiotherapist or another health care practitioner, you must get a doctor's or chiropractor's referral." If you've injured your back and choose to go straight to your physiotherapist, as subsection 50(1) appears to allow you to do, the WCB will refuse to pay for your treatment.

Aside from the legalities, the WCB policy makes no sense if the objective is to return the injured worker to work as quickly and effectively as possible. The requirement for a physician referral delays physiotherapy treatment by an average of about 20 days. By the time an

injured worker gets to us, the injury is often already chronic.

The Rover group in Louthbridge, Birmingham, England, performed a study on the treatment processes for their injured workers. The results were published in the most recent edition of the *British Journal of Rheumatology*. We have a copy of the article with us if you'd like to review it. At the Rover plant, musculoskeletal problems are the largest type of injury or complaint in the workforce — the workforce, by the way, numbering 17,500. The study found that quick referral to physiotherapy — by "quick" they could mean within 24 hours — usually led to faster and more complete recovery and return to work than for those who had been told by their doctors to follow a more passive course, usually bed rest.

Rover set up what they called a proactive physiotherapy clinic for their injured workers. To break even, the physiotherapy clinic would have had to reduce lost workdays by 2,000. In fact, it reduced lost workdays by 6,000 in one year, which generated total savings for Rover in lost time and treatment of about £200,000.

The WCB's current policy — and we fear its policy under Bill 99 — will not allow early, active intervention of this type.

We ask this committee to examine subsection 33(1) carefully. If your understanding of what 33(1) means is the same as ours, we urge you to admonish the WCB to respect the law and allow the injured worker to access the health practitioner of his or her choice in the first instance.

We also ask you to carefully examine the powers that Bill 99 would give to the WCB. We urge you not to give the WCB the power to impose fee schedules on health care practitioners, as subsection 33(4) does. The WCB has historically used this power to keep fees low. Currently, the WCB pays physiotherapists in the regular program \$12.20. That is \$12.20 for treatment that often takes between 30 and 60 minutes and includes assessments, as well as preparing reports to the WCB and the referring practitioners.

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Physiotherapists who continue to treat WCB patients are able to do so only if they have a substantial non-WCB client base, where under current practice fees for analogous treatments are in the \$40 to \$140 range. This allows them to cross-subsidize the WCB patient. We feel this situation can be corrected only if the WCB fee schedule is negotiated and subject to the forces of competition in the market.

As we say in our submission, we have a serious problem as a profession with WCB receivables. Our receivables experience is summarized on pages 9 and 10 of our submission. You'll see that 17% of our receivables either go unpaid or are clawed back by the WCB. We ask those of you here who are business people, how long could your business last with a 17% bad debt write-off?

Currently the WCB refuses to pay for treatment or will claw back payments for treatment given in good faith when the worker's claim is denied or abandoned. We think it wrong that the treating practitioner be left out of



pocket and propose amendments to subsections 33(6) and 33(7) that would allow us to obtain payment from the patient directly in such circumstances.

You'll see that 80% of the bills that are paid by the WCB are paid after 60 days. We urge this committee to propose an amendment to section 33 to encourage the WCB to pay its bills on time. I might add that our receivables survey was done two years ago, but anecdotal evidence suggests that, if anything, the situation has become worse since then.

We find it remarkable that part V of Bill 99 largely overlooks the role of the treating practitioner in return to work and we urge this committee to endorse a new section in part V that corrects this oversight. You'll find our recommendations on page 20 of our submission.

This very briefly summarizes our position and our recommendations. If you have not already done so, we urge you to read our submission. Madam Chairman, we welcome your committee's comments and we thank you for the opportunity of appearing here this morning.

**The Chair:** Thank you very much. Colleagues, just so you know, that brief has been mailed to your offices so you will have it. The clerk would like to get the copy from you of that one report you mention, and it'll be distributed as well.

We have about two minutes per caucus for questions and we'll begin with the third party.

**Mr Bisson:** I have a couple of comments and a question: I'm a former business owner, and when you talk about receivables taking time to be paid by the WCB, I can tell you that in dealing with any large organization, a private sector company or government, it's very difficult to get bills paid on time. I had outstandings, when I was in business, by major employers that were slower than the government in some cases. I think that's a function of large companies, large entities, not just the WCB.

The other comment I want to make before I get to the question is that there's an assertion in your presentation that people who were injured in a motor vehicle seem to get treated better or there's a more efficient way of treating the injuries, because it's the private insurance companies. As a sitting member I have scads of claims of people in my constituency who never got any justice from motor vehicle accident companies and have no way of getting access to justice because there's really no good system to appeal the decision, such as you have in the Workers' Compensation Board. So I don't accept that that is any better. I think it's probably worse.

Now to the question: You talk about the ability for workers to choose the appropriate type of treatment. I agree with you. I'm a former injured worker. I have a back problem and I find chiropractors can't help me. What helps me is massage therapy. I agree with you and I think we need to look at that. We need to take a look at making sure that appropriate treatment can be given to the worker if that's what he or she thinks is better and can be backed up by medical advice as well.

I have a question for you in that regard. The government is saying to you directly as a physiotherapist that it's

going to put a six-month time limitation, that if you don't file your claim within six months you're not going to get workers' compensation. Is that, in your view, going to exclude a number of workers from ever getting compensation? I know in my office I get a lot of people who work with an injury which gets progressively worse and finally they end up in your lap six, 12, 16 months later. Will that limitation exclude the possibility of getting benefits for injured workers?

**Ms Dorothy Borovich:** If I may respond to your first position regarding the accounts receivable, in our clinic we treat 75% who are covered through their extended health care, as well as our motor vehicle accidents, which are covered through insurance companies. The payments are received within three to four weeks, and these are usually larger companies. So definitely there is a difference in compensating for the treatments. In regard to our accounts receivables, as Gloria said, it's approximately 60 to 90 days for WCB. There is a big difference despite insurance companies also being large corporations.

In regard to situations where there are disputes — again I come to the comparison with motor vehicle accidents — if there is a dispute regarding treatment, regarding resolution of return to work, there is a system in place with the designated assessment centres which seems to —

**Mr Bisson:** But you know how friendly that is to the worker.

**Ms Borovich:** Absolutely, but there is a position there; with the WCB there isn't. Let me give you an example. With the regional evaluation centres, which are set up with the WCB, I'll give you an example which has worked in the opposite direction where I have recommended no further treatment. The reason for not recommending further treatment was that I did not feel it was appropriate; it would not benefit that patient. I made those recommendations. It went to the REC and it was overruled. The person continued on treatment for four weeks with no changes subsequent to the four weeks.

**Mr Bisson:** The question about the six-month limitation.

**Mrs Schmuck:** The six-month limitation, as far as affecting compensation, we as treating practitioners aren't influencing that. That's a WCB decision. But as far as affecting the outcome, if somebody is seeking intervention six months after the onset, yes, definitely. Treatment needs to happen early and that's why we gave the example of the Rover plant in England. The earlier the treatment the better. Some of that may be just advice as to how to help that person self-manage, but definitely early intervention is really important.

**Mr John O'Toole (Durham East):** Thank you very much for your presentation this morning. I very much appreciate it. We've heard from medical doctors and from chiropractors, kinesiologists, ergonomists, physiotherapists, massage therapists. We've heard from a number of the regulated health professions. There are ongoing attendant problems with that organization itself, as you know: who does what and who gets paid for what.

It's important in this bill to recognize that the nurse practitioner and other kinds of health care providers are included or expected to be involved as the delivery of health care unfolds. I think the physiotherapy group needs to be part of that. With the return to work and all of the proactive aspect of this, it's very important. I hear you very clearly and I don't want to become entangled with how long it takes the government to pay bills. It's clear the government is reasonably inefficient. That's not a party statement; that's a reality of governments needing to be more focused on results and the customer, whether it's an injured worker or whether it's a person in the legal system. I've made that kind of point.

I would request formally a copy of the Rover study. I think it's important because it supports the very nature of what the government is attempting to do on the proactive side. This is not against workers. In fact this is pro-worker, meaning prevention is the most important part in the workplace. The next part of this, as you said, is the quick return to work — quick treatment, access to service instead of having a six-month response or delays in appeals and filing where the injured worker is subject to a high degree of anxiety in their lifestyle. I guess the point I'm trying to make is the return to work almost — we heard very clearly, I could give you the presentations from the medical community, that the return to work is an important part of the recovery process; hanging out there is — now, do you have suggestions for us specifically in the return to work that you would be able to speak about here now?

**Ms Borovich:** If I may respond to that, again, in comparison to the motor vehicle accident patient, a motor vehicle accident patient can access treatment to the clinics within 24 hours. I'm going to speak for my clinic, but this is occurring across the province certainly. The assessment is half an hour to 60 minutes, and the reason I'm saying that is, it's a comprehensive assessment; it's a musculoskeletal assessment that determines what functionally that worker is capable of doing quickly.

Under the current WCB act the way it is right now, the WCB patient or worker is not capable of accessing that quick treatment. We cannot treat a WCB injured worker for \$12.20 with that. Give them the necessary quality treatment that includes suggestions regarding return to work that includes definitely communicating with the other health care practitioners, communicating with the employer, communicating with the patient via phone, via verbal reports. All this communication is essential for WCB to have earlier. This is what we are saying. What I'm saying also is that practitioners need to be compensated for that quality of service that is necessary for that injured worker.

**Mr O'Toole:** Yes, I would agree. The fee schedule —

**The Chair:** Mr O'Toole, we have to go to Mr Patten. I'm sorry.

**Mr Patten:** Good to see you today. I am empathetic totally with your case and I wonder why you bother even dealing with any WCB cases when it's obvious that you're being dealt with in a disrespectful manner.

**Mrs Schmuck:** We question as well. In many cases we are dealing directly with employers and it is more effective in all respects.

1030

**Mr Patten:** I think most of the practitioners in any field suggest what you do, and I agree with it, is that the earlier you can move on a situation the likelihood of better results occurs rather than deterioration. So I'm supportive of that.

By the way, the fee schedule sounds quite astounding. What's the fee schedule normally for you if you're on, let's say — you have access to OHIP, right?

**Ms Borovich:** Not to OHIP, no.

**Mr Patten:** You don't, not at all.

**Ms Borovich:** In response to your question, with the people who are covered for the insurance motor vehicle accidents, as in the submission to you, the average treatment for a person covered through extended health care is \$75 per assessment and approximately \$30 to \$45 on average per treatment.

Coming back to your position on why we continue to treat WCB patients, which we still do — myself under the community clinic program — and that was brought up at the accreditation through the WCB at my clinic very recently, I think it's very important that the system put in place be flexible, that all injured people should have the access to the care they require, that their needs be assessed early and this be taken care of, that it be a win-win situation for all parties. Employers have recognized the importance of the intervention early. They are now directly compensating clinics with that earlier because a worker is not covered between zero and 20 to 28 days for the community clinic program. At our clinic employers are actually stepping in and saying, "We'd like the treatment up front. It works," and most people are completed within 21 days.

**The Chair:** On behalf of the committee members, we thank you for bringing your presentation and your ideas before us today.

## AUTOMOTIVE PARTS MANUFACTURERS' ASSOCIATION

**The Chair:** I'd like to now call representatives from the Automotive Parts Manufacturers' Association, please. Good morning and welcome. Please make yourself comfortable and introduce yourself for Hansard.

**Mr Ken MacDonald:** Good morning. My name is Ken MacDonald. The Automotive Parts Manufacturers' Association welcomes this opportunity to provide you with our two cents' worth on Bill 99. In fact, I promise you three or even four cents' worth, so important are the issues for our industry.

Who are we? We are the national association for suppliers of OEM parts and materials for the automakers. The industry employs about 90,000 Canadians, mostly in Ontario, and generated about \$22 billion worth of GDP last year, most of which is exported.



The APMA has taken a keen interest in the WCB reforms from the outset. In the fall of 1995 we surveyed our members and prepared a detailed position paper that covered both Bill 15 and phase 2 issues. Numerous member companies of our association were represented at a consultation with Minister Cam Jackson hosted by us shortly thereafter. In December 1995 we made submissions on Bill 15 to this committee. When the minister's discussion paper came out the following month, we studied it and prepared further submissions, detailed ones for the formal consultations of that spring. We have also participated in the work of the Employers' Council on Workers' Compensation and have met several times with WCB chair Glen Wright. Throughout, our key message has been that the WCB system must and can be made more efficient.

Our concern stemmed from the fact that our member companies' biggest customers, the Big Three automakers and the Japanese automakers, have purchasing staff very adept at finding the most cost-effective sources of parts and materials. If the Ontario WCB were to fall behind its counterparts in other jurisdictions like Michigan in respect of rates or effective rehabilitation or return to work, then suppliers in those other jurisdictions would gain a cost advantage that these automakers would very quickly pick up on.

But enough of generalities about competitiveness. Instead, I'll let you in on some newly compiled numbers about where automakers are choosing to build their new facilities and factory expansions; important, because of course our auto parts manufacturers in Canada won't ever sell from Canada to a South American or a European or an Asian-based facility. The APMA tracked their announcements over the past 24 months, and out of a total of C\$18.5 billion in total capital investment announced for North America, by all automakers, Canada accounts for \$3.5 billion. We can do better than that. Of course, WCB is one factor in those decisions as to where to build those factories.

We have reviewed Bill 99 and were most pleased to see that most of our recommendations have been adopted. In particular we applaud the increased focus on safety, on return to work, on greater vigilance for fraud for all parties and on insurance principles and practices. More specifically, we welcome the tightened time frames for appeals, the obligation to consent to the release of medical information and the obligation of workers and employers to cooperate in planning return to work.

We are still deeply concerned about the fact that many of the health professionals, who serve as the gatekeepers to workers' compensation, have little or no background in OHS, occupational health and safety. There are still too many stories of doctors who, being uncertain about the extent of a worker's incapacity or the time necessary for convalescence, prefer to overstate it and perhaps sometimes overstate it significantly, perhaps so as to minimize any risk of liability. We strongly urge that OHS training be required for all those who would write medical reports or the return-to-work functional ability information forms.

There is also some room for improvement still on safety. We believe the NEER program is focused too much on the severity of claims, with not enough weight on the frequency of claims.

All in all, Bill 99 we believe is a step in the right direction of protecting industrial jobs.

*Interruption.*

**Mr MacDonald:** I was silent during other presentations.

We commend the government for its courage in tackling WCB reforms and administering some tough medicine. We believe, though, that some doctors need some medicine too. Do be sure to finish the job. Those are my comments.

**The Chair:** Thank you very much. We have approximately three minutes per caucus for questioning, beginning with the government caucus.

**Mr Maves:** Thank you very much for your presentation. Some questions around return to work: Are you aware of many of your members having return-to-work programs at present?

**Mr MacDonald:** Many, but not all, do. It's an area for improvement on our side, I admit.

**Mr Maves:** Do you think that the new obligation in section 40 is going to encourage your members to start to adopt return-to-work programs?

**Mr MacDonald:** I can't see that it wouldn't contribute.

**Mr Maves:** You've talked about the functional ability information forms, and where we've seen the existence of return-to-work programs — the Paperworkers union up in Thunder Bay at Avenor had one, which was very effective. They had their own functional ability forms. Could a return-to-work program work without employee and employer cooperation and without those forms, without the knowledge of the functional abilities of that injured worker?

**Mr MacDonald:** Certainly you need to know the functional abilities of the worker. We're not convinced that forms as presently drafted are ideal and we have severally made submissions on the wording of the forms. Cooperation and appropriate information, I think it's clear, are both key.

1040

**Mr Maves:** Last, you talk about the NEER program. I've heard from different folks; sometimes some will say the NEER program has just pushed some claims under the carpet; other people, including some labour groups, have said that it's increased the attention that employers are paying to occupational health and safety because they understand it can have a positive impact all the way around, not only morally on their workforce but also on their bottom line. What's your view of the NEER program in general and how specifically do you think it can be adjusted?

**Mr MacDonald:** Overall it's useful, only, in conjunction with such things as appropriate enforcement of the Occupational Health and Safety Act, of course. No one incentive program can completely answer all the needs

that there are concerning ensuring safety. Specifically on NEER, we've submitted elsewhere, but NEER has a place. We're suggesting some adjustments, but it has a place alongside, as I said, enforcement of safety laws.

**Mr Maves:** We've had a large increase — our government has just hired and filled some empty positions for Ministry of Labour inspectors and we've increased by 40% total field visits and inspections. The levying of fines has increased substantially also in the past two years. I wonder, is the Ministry of Labour inspectors' role just as an enforcement mechanism? Is that the appropriate role, in your view?

**Mr MacDonald:** The ministry —

**Mr Maves:** The Ministry of Labour workplace inspectors, is that the appropriate role, just for them to enforce, or should there be an educative role also when they go to a workplace?

**Mr MacDonald:** Educative roles are being performed now and of course they're very helpful in the sense that they're preventive in their focus. Both have to continue. Whether they would be provided by one officer or another is not something I had developed thoughts upon. I want to see both roles performed by whomever.

**Mr Dominic Agostino (Hamilton East):** I have a couple of questions and concerns about the tone of the brief and a little bit of background into this. You state that if Ontario were to fall behind its counterparts, like Michigan, in regard to the WCB, somehow it would put you at an economic disadvantage and it would cause a problem. Are you suggesting through that statement that if states like Michigan continue to drop their rates, continue to drop the rates they pay workers, continue to make it much more difficult for injured workers, Ontario should follow suit in order to allow your industry to stay competitive?

**Mr MacDonald:** No one would ever say that any one factor should be sacrificed to such an extent that you're going to have those kinds of problems. The decision where to invest is a multifactored decision. I've only said that all these factors, including the WCB, are ones that you keep within your sights when you make decisions about investment choices, and therefore it's incumbent upon a public body like the government of Ontario to give some thought to that.

**Mr Agostino:** You've made what I think is a very serious accusation on page 3. I want to ask you about that. You said, "There are too many stories of doctors who, being uncertain about a worker's incapacity or time needed for convalescence, prefer to overstate it so as to please his/her patient or to minimize risk of liability." I would read this that you're suggesting family doctors in this province are lying when stating the injury, and I think that's a fairly serious accusation you're making about family doctors and physicians in Ontario. What evidence do you have to back that up?

**Mr MacDonald:** I think that you've levied just now a very serious accusation against me, because the wording doesn't state that anyone lies about anything. I've chosen the words carefully. Where there is uncertainty, a professional has to make a decision which side to come down on,

whether to err on one side or the other. I'm using the word "stories" because my evidence is predominantly anecdotal. I agree therefore that there could be perhaps somewhere out there stronger evidence on the issue, but I'm speaking of anecdotal evidence right now. I would suggest that everything else being equal, you're going to err on the side of overstating rather than understating. The consequences for an erroneous understatement of the severity are more onerous than the opposite, than overstating, for the doctor.

**Mr Agostino:** With all due respect, sir, by suggesting that doctors overstate in order to please the patient, that would suggest to me you're questioning the integrity of physicians in this province, and I would think you should be careful of that.

Just one more: Can you point out anywhere in the brief here that you speak as to the protection of the rights of injured workers and how it would benefit your industry by having a good system in place to protect the rights of injured workers?

**Mr MacDonald:** I stressed at the outset the importance of safety and applauded the fact that there is some additional attention to safety, although more attention needs to be given.

**Mr Christopherson:** Thank you for your presentation. I have a number of responses to your submission and then perhaps a question. First of all, you state towards the end of your brief, "Bill 99 is a big step in the direction of protecting our industrial jobs." I would say to you, as someone whose background is the auto workers' union before I entered into politics, that in most cases the unions in industrial sectors care a hell of a lot more about maintaining jobs than a lot of employers do. Further, with auto workers in particular and in terms of the automotive industry, we've heard right from Buzz Hargrove on down through to local representatives, including Jack Dunn, the financial secretary of Local 636, who is the next speaker, condemning Bill 99. If they thought for one instant this was going to kill any of the jobs of the members they represent, they wouldn't hesitate to say so, and they don't. They're very much opposed to this bill.

I would also point out, when you talk about competitive rates, that the federal government just recently released their own study that showed that our WCB rates are indeed comparative, and they used that argument as part of their selling the argument that Ontario and Canada are a good place to do business. I heard the same argument, sir, when we passed Bill 40 and finally outlawed scabs again in Ontario, which this government has allowed to come back in, and I can tell you that I watched the third party and representatives of industry say that jobs by the thousands were going to leave. The reality is that in the first full year after that we had a record level of investment in the province of Ontario under Bill 40, so we've heard these scare arguments before.

The last point, and I'll put it by way of a question, is that you state in closing that you commend the government for their courage in administering some tough medicine. I



would say to you, sir, that it doesn't take a whole lot of courage to go after injured workers. That's just a bully.

You said in your report that you're pleased that a lot of your recommendations were adopted. None of the recommendations of injured workers or the people who represent them were adopted, and I'd like to hear from you how you think in any way Bill 99 is fair. The people you represent, I'm sure, are very happy because they're getting a 5% cut in the premiums they pay, \$6 billion worth that's coming off the backs of injured workers. Those injured workers are losing 5% of their income. What do you say to those injured workers who do not feel that this is fair, courageous nor tough medicine, but merely a bully government going after their rights? What do you say to those injured workers who are sitting right there behind you?

**Mr MacDonald:** You raised a number of points there. The first one you raised was a challenge as to whether or not we care about jobs, as others do. Needless to say, if jobs, ie, functions, manufacturing this, manufacturing that, don't happen in Canada, then Canadian companies operating here don't earn any income, so of course they do care. Their *raison d'être* disappears if there's no work being done here. The industry continues to be one which is relatively labour-intensive. There will continue to be concern about jobs to the extent that they continue to be concerned about the *raison d'être* for their factories in Canada. That's the first point.

1050

The second point was the suggestion that we're engaging in scare tactics. I have indicated here as clearly as I can some of the best information we have lately about decisions on where companies choose to establish their facilities and create employment. Those numbers are taken from the newspapers, magazines, trade journals etc. They're pretty much a number-crunching exercise. You can deal with them as you see fit. I haven't used scare terms; I've simply put together this information for you for your consideration.

As for the third point, you suggested the government could not be said to have exhibited courage in the sense that their target supposedly was injured workers. Whether or not there's a target, and whether or not that target is injured workers, is a political judgement call. My point is that the reforms would attract scrutiny from a variety of constituencies across the province. Reform to the WCB invariably will bring, from some side or another, some consternation, some objections. There is potentially a political price to pay for any reform to a law that has a wide range of constituencies and it is in that sense that I use the term "courage," courage to proceed even if there may be those who will speak vociferously against the reform.

**Mr Christopherson:** You didn't answer my question. What do you say to those injured workers? They got shafted.

**The Chair:** I'm sorry, time has expired. Thank you very much for taking the time to bring your suggestions before the committee today. It's appreciated.

## CANADIAN AUTO WORKERS LOCAL 636

**The Chair:** I'd like to now call upon representatives from the Canadian Auto Workers, Local 636, please. Good morning, gentlemen. Would you please introduce yourselves for Hansard. You have 20 minutes for presentation time, that may or may not include questions.

**Mr Jack Dunn:** Good morning. The gentleman in the middle is Rob Leeson and he's a member of our committee Local 636. On my extreme left is Nick De Carlo and he heads up compensation for the auto workers internationally.

Dear Panel Members: The workers' compensation and employment insurance committees of CAW Local 636 is pleased to be given the opportunity to express our views and relay our membership's concerns to the panel regarding Bill 99.

CAW Local 636 has a deep history of serving well its membership of 2,500 hardworking men and women for more than 50 years. Throughout this 50 years, the leadership of Local 636 has many times worked with, and at times lobbied for, progressive change with all three major parties in Ontario. Of course, we didn't agree on every issue, but we did take the necessary time to listen to each other.

As history clearly indicates, since being elected in 1995, the present government has never listened with an open mind to the concerns of working people. This committee believes Bill 99, in its present form, is by far the most anti-worker piece of legislation ever proposed by any Ontario government in over 80 years.

The committee has been tracking and actively responding to the Harris-Witmer WCB reform agenda since the fall of 1995. During this time frame of approximately 18 months, we have met and debated the ongoing changes to the WCB proposals with our local MPP, Mr Ernie Hardeman, Mr Cam Jackson, Minister without Portfolio responsible for Workers' Compensation Board, and of course Labour Minister Elizabeth Witmer, who introduced Bill 99 on November 26, 1996. We have tried to impress upon these government representatives not to allow their partisan feelings for the employers of this province to interfere with their responsibility to bring forth reforms that truly reflect the needs of workers in Ontario.

First on our report is the concern we have that changes to the WCB act of the magnitude the Harris government is bringing forth should have gone well beyond the public hearings format we see being allowed today. There are over 200,000 workplaces in the province of Ontario. Our committee does not believe the present format for public hearings will give everyone who wants to make a presentation before this, panel the opportunity to do so. Restricting input from the public, representatives and injured workers in our opinion will come back to haunt the Harris government.

Minor changes, we agree, do not require the amount of consultation we suggest, but certainly when a provincial government completely undertakes to rewrite the WCB

act, workers, employers and the general public of Ontario deserve the right, and should be given the opportunity, for input on the final proposed legislation.

The Harris government, through Bill 99, also proposes that workers who are injured on the job will have to apply directly themselves to the WCB to begin their claims. We have a number of problems with this proposed approach as WCB representatives. If this proposal is implemented into the act, we believe many workers who are injured on the job will not apply for compensation. Many workers, especially non-union workers, will feel intimidated if they are required to ask their employers for the application forms.

This proposal begs the question to be asked: Is this simply a proposal suggested by someone who does not understand the pitfalls they're creating, or is it by someone who's trying to take advantage of those pitfalls at the expense of the injured worker?

These types of WCB application forms have proven in the past to pose serious problems for workers to understand. Presently in Canada, statistics indicate approximately 24% of all Canadians do not read and write at a grade 9 level. We are concerned a mistake made innocently on the application form could delay or deny an injured worker their benefits. It is also our understanding injured workers must also provide a copy of this WCB application form to their employer. Our committee suggests strongly to this panel that we believe a better way to enforce proper reporting of workplace injuries is to have the employer provide the forms, fill in the required information following consultation with the injured worker and require the employer to bear the cost of sending the report to the compensation board.

As you might be aware, this excellent idea is already enshrined in the present act. The suggestion we have regarding the present reporting concerns is that the Harris government allow the board to significantly increase the fines to employers who do not report workplace injuries as presently required by the act.

In our opinion, the WCB act presently does a fair job in balancing the rights of the injured worker and that of his employer to know their medical status when requests are being made to the injured worker's confidential medical file. In most workplaces in Ontario today, injured workers are required to return to their employers a detailed return-to-work information form that is filled out by the injured worker's doctor. The form requests the doctor to indicate if the injured worker is (1) able to return to regular duties immediately after treatment; (2) able to return to light duty — the employer usually lists in this section a list of light duty work the employer can provide; or (3) unable to return for an estimated time frame.

There is also an area on the form requesting the doctor to indicate the nature of the disability. This information apparently does not satisfy many of the employers in Ontario, because it is our understanding that Bill 99 will force injured workers to authorize their doctors to release their personal confidential medical information regarding their injuries to the employer or face possible loss of WCB benefits if they object. If this format is allowed by

the Harris government, we believe many employers will take advantage of the opportunity, using confidential medical information to have injured workers denied benefits.

Labour Minister Witmer indicates this approach is supposed to expedite a return-to-work process which obliges the employer to submit a return-to-work plan after an injured worker is absent from work for more than five days. It is our opinion that allowing the release of confidential medical information to an employer who has very little expertise in these matters will only encourage punitive return-to-work plans that will not benefit the injured worker. This approach being proposed by Labour Minister Witmer, we believe, creates a master-servant relationship. Stripping workers of their basic right of medical confidentiality certainly opens the door for abuse to occur.

Bill 99 also allows the Workers' Compensation Board additional powers to place injured workers into a labour market re-entry plan. The WCB committee of Local 636 agrees present programs offered through vocational rehab have not been successful enough in returning injured workers to their pre-injury employers, nor have workers been totally satisfied with many of the retraining programs vocational rehab has placed them in. We had hoped Bill 99 would have required the pre-injury employer to invest more effort, money and time in procedural and engineering changes to the work station of the injured worker, which would allow the injured worker to return to the pre-injury employer and become a valued employee again.

Unfortunately, it is our understanding this labour market re-entry plan could force an injured worker to be placed with another employer, without any consent requested from the worker. An injured worker placed into a plan with another employer, it appears under Bill 99, does not have a guarantee of a job and certainly no guarantee of a right to retraining. Bill 99, we believe, also gives the right to the WCB to outsource this plan to anyone it chooses, perhaps to a private insurance company or even to an agent of the injured worker's employer.

#### 1100

Under this proposal, what rights does an injured worker have? Our committee believes the proposal favours the WCB and the employer. It does not favour the injured worker. The worker will have less rights to object, less rights to appeal and fewer organizations to represent their interests.

Bill 99 also indicates that Labour Minister Witmer is suggesting the Harris government create a new indexing formula for past and future benefits. The new formula that Labour Minister Witmer proposes, we understand, indicates the calculation of benefits will be one half of the consumer price index less 1%, with a maximum cap of 4%.

What do all these new math calculations mean to the injured worker? Most workers won't be aware of the financial changes to their benefit level right away unless they are members of a union.

Our committee's opinion is that Labour Minister Witmer's new indexing proposal is very unfair to the injured



worker. Our math reveals this new formula will reduce purchasing power of an injured worker's pension by 60% in 20 years.

Of course, Labour Minister Witmer proudly tells her boss, Mike Harris, that this new indexing formula will save the WCB \$9.3 billion. Unfortunately, what she conveniently forgets to tell workers is that this \$9.3-billion saving for WCB will come from the lost benefit level occurred by injured workers in this province.

Labour Minister Witmer, also through Bill 99, promotes that payments for lost-time benefits be reduced by 5.6%, from the present 90% net to less than 85% of net pay. Remember, workers' compensation is based on a no-fault system, but under Witmer's proposal a worker is automatically penalized a reduction of 15% of their wages when they incur a workplace injury.

It is our belief that this calculation of average earnings basis — your previous earnings on which the 85% payment is based — is intentionally written very loosely. It seems these previous earnings can be reduced by such factors as periods of layoff in the previous year.

Again Labour Minister Witmer proudly states this will save the WCB \$3.1 billion. This cut to injured workers' benefits is very unjust, certainly when she recommends through Bill 99 that employers of this province should receive back a 5% rebate on their WCB assessments, worth a cool \$6 billion. When the total is added up for the employers, it amounts to more than \$15.2 billion in savings.

Where is the common sense or fairness when injured workers' benefit levels are being gutted at the same time the WCB reports a profit of more than \$500 million in 1995 and has more than \$8 billion in assets?

The truth of the matter regarding the concerns that the WCB has with the unfunded liability is simple. Since 1983, the employers of Ontario have intentionally not funded this section properly. The employers owe this money, not the workers or the taxpayers of Ontario.

Under Bill 99, Labour Minister Witmer also proposes outlawing compensation for occupational stress and placing strict time limits on chronic pain. This proposal, in our opinion, again does not make any common sense to workers, for workers believe the impact of a work-related physical disability or psychological disability is the same.

The Harris government is making the workplace stress situation worse by its constant attacks on the working class. Negative changes to labour reform, health and safety, and now Bill 99 are enough to make any worker develop stress. At the same time, workers in many workplaces are telling us they are becoming very angry and resentful towards the Harris government's agenda of constantly attacking them.

If these proposals to outlaw compensation for occupational stress and placing strict time limits on chronic pain are passed into law, we feel this will allow unscrupulous employers the opportunity to freely harass and intimidate workers. Workers disabled with chronic pain fear they will be thrown on the scrap pile if their pain does not

subside or if a strict time-limited treatment recommended by WCB does not cure their disability.

In Ontario, statistics indicate over 6,000 men and women die each year due to workplace disease. It is very unsettling when you compare the number of physical deaths to disease deaths in the workplace. It is estimated that 30 times more workers in Ontario die of workplace disease deaths than physical deaths. Our findings are not meant to minimize the terrible impact physical deaths have on our members, but to emphasize our frustration with Labour Minister Witmer, who proposes to eliminate the Occupational Disease Panel, ODP. This one-of-a-kind independent scientific body provides the research necessary to prove the link between chronic disease and the workplace.

The WCB committee of CAW Local 636 believes the independent scientific information which the Occupational Disease Panel provides is essential for recognizing and preventing occupational disease in the workplace. We stress to all Tory members on the panel that eliminating the Occupational Disease Panel is totally unnecessary and is one proposal the Harris government will come to regret.

As compensation representatives, we regularly represent injured workers at various levels of appeal as allowed by the Workers' Compensation Act. Presently, the final level of appeal is the Workers' Compensation Appeals Tribunal, WCAT. This is an independent body which both employers and workers can appeal to if they believe the Workers' Compensation Board did not treat them fairly.

The Workers' Compensation Appeals Tribunal is presently allowed to interpret law and can override WCB policy when it finds WCB policy does not reflect the meaning of the law. The new legislation being proposed in Bill 99 will prohibit WCAT from interpreting legislation, and WCAT will be strictly limited to ruling on WCB policy only. This approach by the labour minister is not fair to the injured worker. It upsets the level playing field between the WCB and WCAT and allows the board a free hand. This proposal will deny rightful benefits to injured workers and in our opinion should not be implemented.

The labour minister also proposes, through Bill 99, cutting the budget of the office of the worker adviser, OWA, by 30%. This office was originally established to represent all workers in dealing with a complex WCB system. It is a very anti-union move. Premier Harris and Minister Witmer suggest rescinding the right of unionized injured workers to seek assistance or representation help from the OWA. Is this the reason Premier Harris and Witmer are using to cut OWA's budget by 30%?

The WCB committee of Local 636 believes this proposal is very underhanded and once again reveals to the hundreds of thousands of hardworking unionized men and women the utter contempt that Premier Harris and many of his government colleagues hold for us. We firmly believe this proposal should be scrapped and that Premier Harris must finally understand he must represent all workers in Ontario fairly, including unionized workers.

There are many other areas of Bill 99 which we believe undermine workers' rights to fair compensation for work-related injuries.

Labour Minister Witmer's proposed reforms to the Workers' Compensation Act will not, we believe, resolve the real problems. In 1995, tens of thousands of working people were severely injured on the job and, regretfully, over 200 working men and women lost their lives in the performance of their jobs. For these working men and women of Ontario, there won't be any big writeups in the newspapers, nor will there be any parades in witness of their tragic deaths.

The Harris government, in our opinion, has approached the problem with workers' compensation from the wrong direction. It is not the injured workers of Ontario that his government should be attacking through Bill 99. Premier Harris and Labour Minister Witmer should be concentrating their efforts on charging the unscrupulous employers of this province who continually violate both the Occupational Health and Safety Act and the Workers' Compensation Act. These same employers continue to maim and kill innocent workers in Ontario. We request this panel to forward our concerns to Premier Harris and Labour Minister Witmer. Through you, we ask them to reconsider their negative proposals in Bill 99.

CAW Local 636 represents thousands of workers in Oxford county who expect and deserve fair compensation from this government when they are injured.

This is respectfully submitted by our committee chairman, Mr Gray, and the members are myself, Jim Farrell, Dennis Burleigh, Roy Clarke, Brian MacDonald and Rob Leeson. Thank you very much.

**The Chair:** Gentlemen, thank you very much. That's a very full presentation and it has completed the time allotted. We thank you for taking the time to come before us this morning and we appreciate your advice.

**Mr O'Toole:** Madam Chair, on a point of clarification if I may: There's one page here in your presentation, paragraph 7: "In Ontario, statistics indicate over 6,000 men and women die each year due to workplace disease." That number is incorrect. The number who died due to work-related injury was 247. For the record, I think we should be clarifying that.

**The Chair:** Perhaps these gentlemen would prefer to submit something to the entire committee to —

**Mr Nick De Carlo:** I'll answer the question.

**The Chair:** No, I'm sorry. I don't want to get into a question-and-answer.

**Mr De Carlo:** It's a simple answer and it's a simple clarification. Give me one minute to do it.

That's a study that was done by Dr Analee Yassi in the late 1980s; we'll provide it to you. Dr Analee Yassi is a well-respected occupational physician, an epidemiologist. That study indicates there are up to 6,000 deaths per year in Ontario. The numbers you're quoting might be the total number of deaths in Ontario under the Workers' Compensation Board which are recognized claims, but there are far more people than that who are dying of occupational disease who are unrecognized.

**Mr Christopherson:** I'd like a clarification.

**The Chair:** Hang on.

**Mr Christopherson:** Are we going to lose the thousands of jobs that the previous presenter said we're going to lose?

**The Chair:** Please, Mr Christopherson.

**Mr De Carlo:** No, we're not.

**The Chair:** I think the committee would be interested in receiving the material that you suggested from that doctor, and I'm sure the clerk will distribute it to all of us.

**Mr De Carlo:** We can give you a copy of that for sure.

**The Chair:** That would be helpful. Thank you very much, gentlemen. We appreciate it.

1110

#### RETAIL WHOLESALE CANADA, UNITED STEELWORKERS OF AMERICA

**The Chair:** Could I please call representatives from the United Steelworkers of America. Good morning, sir. Welcome to the committee. If you'd please introduce yourself for Hansard.

**Mr Dave McCormick:** My name is Dave McCormick and I'm with Retail Wholesale Canada, the Canadian service sector division of the United Steelworkers of America. I'm here on behalf of our organization to first of all say that I'm not here individually. The reason I'm here is because we have policies that are developed through convention. There are issues that our members talk about on the shop floor and at work. It's not just something that this organization comes out of the blue and says, "Oh, we don't like Bill 99." It's something from experience within our organization and within servicing our members.

On a personal note, for the last five years I've had the opportunity of representing workers who have been injured and diseased on the job throughout the different levels of the board, including the appeals tribunal. I'd like to thank Dave and Gilles for the opportunity to be here. After all, it is a New Democratic slot that I ended up getting on the committee.

I'm not overly surprised when I look at the fact that these hearings are cut short and there are some 1,000 deputations you're not going to hear from. I notice that the Minister of Labour isn't here. You also won't hear from the 300,000 workers who are probably going to be injured within the next year at work. These hearings, quite frankly, are a sham. That's evident simply by the denial of listening to the public. I want to hope that the public remembers the arrogance of this government. The recent polls, which now show that the Conservatives have 33% of the vote, would suggest that they are starting to listen. I can only hope you go the same way that Brian Mulroney did.

*Interruption.*

**The Chair:** Order, please.

**Mr McCormick:** As a representative, I'd like to talk to you as if we had this legislation in place, about some of



the people I represent and in terms of what would happen to them under your damn legislation.

I'd like to talk to you about a young lady who can't lift a pot off the stove. Prior to her injury, she had two part-time jobs to make ends meet. Take a look at your new legislation. There's no provision in it for concurrent employment, so what happens to her is that her income is now going to be cut. This is a young girl, 23, barely a baby in the workforce, injured on the job, who now can't even take a pot off the stove, and this government doesn't give a damn.

I'd like to talk to you about a young lady who has been advised by her doctors not to have children. Under your legislation, with the time limits, she wouldn't even have an appeal because three years ago, when her case was originally denied at decision review branch, she didn't know enough to go forward and do an appeal.

Let's talk about employer interference, of a young woman who received a medical report from an employer's doctor. The employer's doctor did not examine her. Their opinion was based on a conversation with her family doctor, and the family doctor responded at that time: "I have not yet seen this patient. She's been seen in emergency. I don't have the reports. I'm not prepared to make a comment on it." Based on that information, the employer's doctor wrote to the employer and said, "I don't think it's work-related." Since then, she goes back to work, she's fired. She's fired on the day she comes back because her claim has been denied and is under the appeal process. She's had a job offer in a massage parlour.

These are the type of people that your government is saying don't deserve fairness, don't deserve justice.

Let me talk to you about a young woman. Every night her child rubs the back of her neck while she throws up. She's up every night, in pain, yet your government says that chronic pain is the usual healing time. You tell me how that's just, how that's fair.

There's a gentle family man whose children won't speak to him any more. Why? Because of the pain he's going through. But this pain should have resolved; that's your determination on chronic pain.

Or let's talk about how we're going to fill out the forms. Let me talk to you about a young man, back in 1992, who ended up going to his employer and saying to his employer, "I've hurt myself." The employer responds, "I think that maybe if you went off on group insurance benefits, you'd get paid faster, you wouldn't have problems getting your money, and then you'll make sure everything is fine," which he does. Three years later he ends up with a recurrence, he files for compensation and he ends up in a long process. This is not the first time that's happened with that employer.

Let's talk to you about board policy and what the WCAT is going to do. Right now I am going to the appeals tribunal for a woman who the board determined was capable of making \$600 a month, so she got a \$600-a-month future economic loss. She subsequently applied for Canada pension disability benefits. When her FEL review came about, she was getting \$600 a month from Canada

pension disability and she was deemed capable of making \$600 a month, so now she gets a zero FEL. That's based on board policy. If you want to take a look at what you're saying, that you can only interrupt board policy, then this woman gets nothing. It doesn't matter that in order to receive Canada pension disability benefits, she has to be declared incapable of working. That doesn't matter. Board policy says one and one is two, and that's what you get. The government's proposal is going to deny that woman the opportunity to have her case fairly and justly heard.

Or a man who took two Tylenol 2 to walk his daughter up the aisle to give away her hand in marriage. What about him? He ends up getting a FEL pension. Again, the same process happened to him with the Canada pension disability benefits. He's now in the appeals process, but again, not according to your government.

I'd like to talk to you about a grandfather who recently has gone through the system and has received a substantial award from workers' compensation dating back to 1975. When he got that money, he turned around and said to me: "The money's fine. I like the money but, my God, I'd give it all back to pick up my grandchildren." How do you look at justice there?

I look at the legislation and I refer to another young woman I have who, according to the board, is suitable to go out and get another job. It doesn't matter the fact that she's 55, that she walks with a limp, that every day she can hardly move around; there is suitable work that she can do out there. But that work will never be available for her, never be available because she's disabled, and severely disabled. When you look at your legislation and you look at the labour market re-entry programs, why do you just talk about job suitability? What about the availability of the work? Before this accident, that lady worked. It's because of a workplace accident that she can't work.

The people I represent don't abuse the system. They are forced on to workers' compensation because of a no-fault accident. The statistics verify it: 50% of all claims are no-loss-time claims; 20% to 25% of injured workers return within two to three weeks. The reason injured workers don't return to work is because they are denied meaningful re-employment, because employers in this province are not providing the work; they're not modifying the jobs. That's the reason there is a problem within the system. Don't penalize those who are already penalized.

1120

You talked about removal of chronic stress. What about sexual harassment? Is that not relevant? To 50% of my members it is. Within the labour movement we're doing our part to address that. Part of every educational program I deliver on behalf of the Ontario Federation of Labour deals with the problems of sexual harassment, it deals with racial harassment and it deals with these issues. But now we have a government that's turning around and saying it doesn't really matter if you're damn well harassed at work, "We don't give a damn because you're not going to make the employers pay." Well, the only way it's going to stop is when they've got to pay for it.

When you cut benefits to 85%, you're not hurting the 50% of people with no-lost-time claims; the people who return in two to three weeks aren't going to feel a lot. But persons who end up with a permanent disability are going to find their life even further destroyed. These people don't receive now the benefits they received before. They're not receiving the pension plans. They're not receiving the family coverage for their drugs. They're not receiving their dental plans. That's not covered. A lot of them, if they make over the cap, don't even receive 85%. What you are saying is that they deserve less because they're second-class citizens and because they're not worthy. I say that's wrong.

Labour-management re-entry program, control to employers, and who gives a damn how much they abuse the system? Just like that young lady who now can only find a job in a massage parlour, you just go ahead and give that employer more power, because I know that's a damn good employer. They won't do anything wrong. The reason they do it, the reason they force workers off and they fight their claims and they turn around and say, "We won't allow you to go on sick benefits if you file for compensation," is because for every worker who fights it, 10 more are going to say, "I can't afford to." They're going to say, "I'll go on your company benefits," and "We'll make your job safer and we'll make it a little bit better because you're not recognizing workplace accidents." So for every employer fighting it, 10 workers can't afford to. They can't afford to take the fight on; they can't afford to go through the system.

Where in here are we talking about employer abuse of the system? I don't see it. The recent article from Glen Wright is in an issue of *Abilities*, summer 1997. For those who don't know, he's the CEO of the compensation board. He refers in the article to the complexity of the system, yet you are turning around and adding a third set of major legislation. We already deal with pre-1990, we deal with post-1990 and now we're going to deal with the — I believe it was referred to as the bill of death of 1997. Three major pieces of legislation and you talk about making a system simple? My God, injured workers are going to have to go out and get representation to find out what other piece of legislation they fall under.

I understand why you're restricting WCAT to board policy: because you have to rewrite the legislation, and WCAT right now has past practice that they rely upon so that there is consistency within the system. It doesn't matter, the fact that the majority of WCAT decisions that are released are unanimously agreed upon by the employer representative, by the labour representative and by the neutral vice-chair. That doesn't matter. What matters is that you've got a government that's so damn concerned about destroying injured workers even further by attacking the most vulnerable in our society that they'll rewrite the legislation so there's no past practice to go on. You don't talk about the impact on health and safety, because if you did, you would never have gotten rid of the Occupational Disease Panel.

You heard from Nicky Carlan, who said that if the Occupational Disease Panel saved only three lives per year it would pay for the cost of the panel. I don't know what price you put on a human life, but I hope like hell that the people of Ontario do and remember that at the next election.

**The Chair:** All right, we have time for very brief questions and answers from each caucus. We'll begin with the Liberal caucus, please.

**Mr Patten:** Thank you for your presentation. It was very moving and articulate. It sounds to me, by what you say, that this legislation has really tipped the balance of attempting to provide a fund and has forgotten the original purpose of the mission of the board, which was to provide an effective and significant support to people who are injured in workplaces. So I ask you if in your many of the functions, the research functions, the appeal process, the rights, the eligibilities — it sounds to me as if a lot of people who will be injured just won't be in the program, that they'll be in other programs. They may not show up as a statistic for WCB, but they will be on welfare or social assistance or in other programs out of the board program. Is that your view as well?

**Mr McCormick:** I would agree it's strictly a down-loading of costs on to the taxpayer. The WCB is employer-funded. It will be downloaded on to the taxpayer and we're going to pick it up in terms of welfare. They've already done their part by reducing welfare benefits by 21%. I guess that's how they're going to reduce their cost: at the taxpayers' cost.

**Mr Christopherson:** Dave, thank you for an excellent presentation. My question to you would be this: You've listed a litany of changes that are going to affect your members in a negative way. I think your members are lucky to be served by people like you who are there to fight for their rights regardless of how few of them are left after Bill 99. They are indeed very fortunate to have you to do that for them.

Can you give us some sense of what it might be like for people who don't have the benefit of you and your union and what they're going to face under Bill 99?

**Mr McCormick:** They may as well not bother filing a claim, because it's going to be denied. Unless you end up with the slip, trip and fall at work, anything to deal with repetitive strain injury, chronic stress, chronic pain, anything where you end up with a permanent disability, you're going to have problems. Those people may as well just get ready to go on welfare.

**Mr Maves:** Thank you very much for your presentation. There are subsections of sections 130 and 138 that are new, that allow the board to go after employers who owe premiums. I just wanted to point that out.

You made a point about one of the ladies you represent. You said she was permanently disabled and the board had said she wasn't and that she could make a certain amount of money. Under Bill 99, section 47 basically adopts the old section dealing with how the board decides the level of impairment. I wonder if you have some advice on how the



board should better do that than under the system that is presently in place.

**Mr McCormick:** If you look at page 26 in my document, there's a study that was done by Sandra Sinclair and John F. Borton Jr, *Measuring Non-Economic Loss: Quality of Life Values Versus Impairment Ratings*, which involved 12,000 injured workers and 300 individuals matched against the general population. They found that your NEL awards are generally undervalued. In terms of the new legislation, there's nothing in place that even says what guidelines they're going to use in terms of what an impairment is and what the measurement is.

**The Chair:** That concludes the time for your presentation. On behalf of the members of the committee, we thank you for bringing your advice and your brief before us.

1130

#### CANADIAN ASSOCIATION OF REHABILITATION PROFESSIONALS, ONTARIO

**The Chair:** I'd like to call upon representatives from the Canadian Association of Rehabilitation Professionals, please. Good morning and welcome; if you would please introduce yourselves for the Hansard record.

**Ms Elaine Hobbs:** I'm Elaine Hobbs and I'm president of the Canadian Association of Rehabilitation Professionals, Ontario. To my left I have Judy Marshall, the executive director of the national Canadian Association of Rehabilitation Professionals, and Katie Parkin, the vice-president of the Ontario corporation. I'd like to thank you for inviting us to speak today.

I'd like to start off by telling you a little bit about the Canadian Association of Rehabilitation Professionals, also known as CARP. CARP was established in 1970 as a national organization to train and promote rehabilitation counselling as a profession, and to set up safeguards for the public to protect them from unscrupulous practice. I'm speaking today on behalf of the Ontario corporation, which is a society of the national organization, and we have 1,400 members here in Ontario.

We have two major types of members in our association: professional members and associate members. The professional members make up about 70% of our organization and are accredited rehabilitation professionals or certified rehabilitation counsellors. These people practise as case managers, vocational counsellors, rehabilitation counsellors or consultants, vocational evaluators and job placement specialists. Our associate members are made up of allied health professionals. We have members who are occupational therapists, physicians, a lot of health professionals who have a stake in rehabilitation. We also have interns, students and consumers as our associate members, who again have a stake in rehabilitation counselling.

Rehabilitation counselling is a systematic process which assists persons who have limitations in life functioning as a result of conditions such as physical impairments, sensory impairments, mental illness, developmental

disabilities and chemical dependencies to achieve, promote, and/or restore independence and productivity. Today we're talking about injured workers or workers with occupational disease.

Vocational rehabilitation involves counselling, communication, goal-setting and case management, which has two components, both medical and vocational case management. We do this through psychological, vocational, social and behavioural interventions and advocacy.

There are many special techniques and modalities used within this profession. We've listed some of them in our presentation today: assessment and evaluation; diagnosis and treatment planning; vocational or career counselling; individual and group counselling interventions focused on facilitating adjustments to the medical and psychosocial impacts of disability; case management, referral and service coordination; program evaluation and research, looking at a lot of community programs, community rehabilitation facilities, educational programs and even the written rehabilitation plan, for that matter; other techniques or interventions to remove environmental, employment and attitudinal barriers; consultation services among multiple parties and regulatory systems; job analysis, job development and placement services, including assistance with employment and job accommodations; and the provision of consultation about and access to rehabilitation technology.

Rehabilitation counsellors are professionals qualified to provide varied and specialized rehabilitation services for persons with disabilities, and we have a very distinct and unique body of knowledge. The essential knowledge and performance areas for rehabilitation counsellors who obtain certification or accreditation are as follows: medical, psychological and economic aspects of disabling conditions; legal, societal and technological influences on rehabilitation; rehabilitation services and service delivery systems; principles of human behaviour; occupational counselling and job placement; coordination of vocational rehabilitation services; and client assessment and counselling techniques.

There are established skills and competencies for rehabilitation counselling. The Canadian Association of Rehabilitation Professionals is a self-regulating body that follows a clear set of guidelines, standards and ethics. The accredited rehabilitation professionals who receive this designation are bound by these guideline standards and ethics. CARP also promotes a certification process through the United States through the Commission of Rehabilitation Counselor Certification. This designation is the Canadian certified rehabilitation counsellor, also known as the CCRC. CARP Ontario is investigating government regulation at this time in order to enhance public protection and professional accountability of our members.

I hope I've described CARP and our organization as well as our specific requirements very well. I'd now like to move on to what we think of Bill 99.

We applaud the government's efforts to reform the workers' compensation system in a fair and cost-effective

manner. We are particularly pleased to see the continuation of the loss-of-earnings benefit, which ensures that workers injured on the job will not face financial penalties for injuries or illnesses beyond their control. It also encourages employers to re-employ injured workers to their best potential. We all realize that the best method of rehabilitation is to try to get the worker back to the pre-injury position. We are also very pleased to see the promotion of health and safety in the workplace and the prevention and reduction of the occurrence of workplace injuries as mandates of the Workplace Safety and Insurance Board.

We have some concerns with Bill 99 and we've included them on an individual basis in appendix 1 of our submission. I will go through the summary of our concerns, which are basically with the areas of access of health care, return to work and labour market re-entry.

CARP Ontario believes that accredited or certified rehabilitation professionals are uniquely equipped to ensure that workers receive appropriate health care, return-to-work and labour market re-entry assistance based on our professionals' demonstrated education, experience, skills, competencies and body of knowledge, which we've gone over earlier in this presentation. Both CARP and the CCRC regulate the accredited rehabilitation professional and certified rehabilitation counsellor designations, ensuring that workers and the public are protected from unprofessional practice while promoting the safe and early return to work of all rehabilitation recipients.

The first area of concern was access to health care. We have some concerns with the wording of the legislation regarding the individual's choice of health professional. We fear that the wording as set in this particular draft could be misinterpreted. We would just like to ensure that the government takes another look at these areas so that the individual maintains the choice of health professional as outlined in the Regulated Health Professions Act, 1991.

Another concern is with the change from the term "reasonable and necessary" to "necessary, appropriate and sufficient." This concern is that the new terminology could be much more restrictive than in the current terminology. Again the board staff must have the necessary knowledge and experience to appropriately determine what is required to return a person with a physical or psychological disability to work. For this reason we strongly recommend that professionals involved in this decision-making at the board level be accredited or certified in rehabilitation.

The limitations on mental stress and chronic pain entitlement as they are set out are another area of concern to CARP. As rehabilitation counsellors, we have extensive experience working with workers with mental stress and chronic pain. Based on our experiences, we implore the government to further consult with medical and psychological experts in the development of appropriate, comprehensive and fair regulations to ensure that workers experiencing chronic pain or mental stress receive appropriate care based on individual needs so that they may successfully return to work. I think a real concern here is that the regulations protect the individual adjudication of

each and every policy rather than setting out very strict guidelines or policy at the board level.

Another concern with access to health care is the definition of "health care practitioner." Here we ask that the government incorporate rehabilitation counsellors into this definition. We've gone over our body of knowledge, where we talk about the rehabilitation counsellors requiring essential knowledge of medical, psychological and economic aspects of disabling conditions; occupational counselling, job placement skills, client assessment and counselling techniques; as well as the coordination of vocational rehabilitation services. Inexperienced or unqualified rehabilitation counsellors may further complicate the return to work or labour market re-entry process, which would in turn increase the claim costs and emotional or psychological costs of disability to the worker.

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Ontario rehabilitation counsellors currently have two bodies through which they may pursue accreditation or certification, both CARP and the CRCC, and both of these bodies are self-regulating.

Our other concern is with return to work and labour market re-entry. Again, we strongly endorse the legislated use of certified rehabilitation counsellors or accredited rehabilitation professionals to ensure that workers obtain the highest-quality service in the return-to-work and labour market re-entry process. Both designations are regulated by professional bodies. CARP is at this point in time actively pursuing regulation through the government of Ontario because of the risk to our clients, the injured workers, and the public.

Enclosed as well in your submission today are some excerpts from the Commission on Rehabilitation Counselor Certification regarding the Canadian certified rehabilitation counsellor designation. We also have enclosed our code of ethics, which does indeed address our standards of practice. We've enclosed the national accreditation information as well as the draft revised accreditation policies and procedures, which will hopefully be used by the Ontario College of Rehabilitation Counsellors.

That's pretty much it for our presentation.

**The Chair:** Thank you very much. We have about two minutes for questioning per caucus, beginning with the NDP caucus.

**Mr Christopherson:** Thank you for your presentation. I appreciate it. Three points I'd like to raise with you, and I'll raise each and then ask you to respond, if you can.

The first one is that you make a very strong statement, and your organization is respected, so it carries weight, when you say in your presentation that you're applauding the government for reform that you state is fair. Given the fact, as I'm sure you know, that employers are receiving a 5% reduction in the premiums they pay while injured workers receive 5% less income, I'd like to know how you square what's happening to injured workers with your use of the word "fair."

Second, you state that you're pleased to see the promotion of workplace injury and occupational disease preven-



tion in the legislation. I wonder if you could point out to me specifically where you see that happening.

Third, you mention specifically that occupational disease is a particular concern of yours and you're supporting the legislation in that context, yet I'm sure you know that the Occupational Disease Panel is a world-renowned organization in terms of its ability to find causal links between the workplace and injury and disease and even death that workers face. How would you square this government's move to fold that up, which has also been criticized worldwide, with your support of this bill?

**Ms Hobbs:** I think those are very difficult questions and I'll do my best to answer them. We're speaking in a very generic form when we applaud many of the initiatives that are introduced in the new legislation. We've not commented on a lot of the issues that you've raised specifically because we believe that they are beyond our scope of practice or our area of expertise.

The clients we deal with are workers who are injured. When we talked about the mandate to prevent occupational injury and disease, although we did not necessarily see it in the act — sorry, it was in the preface to the act — we would like to see more concentration to prevent workplace injuries so that we do not have to then work with the workers; it's prevented altogether.

We did not comment on the benefits. We feel there are other groups in a better position to comment, although financial counselling is indeed a component of rehabilitation counselling. We would just have to work to ensure that our members are better equipped to deal with the reduction in benefits the workers receive.

As for the Occupational Disease Panel, there again we would defer that to the occupational disease experts.

**Mr Christopherson:** Can I just say to you in closing, because I'm out of time, I had a feeling your remarks would be somewhat like that. I think most injured workers, given the professional field that you're in, would have seen you as allies of theirs, and I want to tell you that if that were your intent, you've done a disservice to yourselves because the way you've presented this and what you've said in here gives them support. They can quote it and use that as part of their argument that, "See, this was fair." In reality, there's not an injured workers' group or a union organization or anyone who cares about working people who believes for one second that Bill 99 does anything other than hurt injured workers.

**Ms Hobbs:** I would care to make a brief rebuttal in that we do believe we are servicing the workers in requesting that they have access to regulated professionals to ensure that they're getting the best quality of service out there and to ensure that they are safeguarded from bad practices on the part of the employer, for instance. We did not go beyond our scope of practice and we feel that was the best method of servicing the workers.

**Mr O'Toole:** Thank you very much for your presentation. I won't try to polarize the input. We receive and listen to all input; hopefully, on the other side, they do. We've heard from those who have different opinions. That's what the public process is all about. It would ap-

pear, if you don't accept Mr Christopherson's view of the world, then you're wrong. But there are those who see the world as a fair, balanced and reasonable place.

**Mr Christopherson:** Sure, from where you sit.

**Mr O'Toole:** As far as I'm concerned, we've had input from employer advisory groups and from the medical professions, and for the most part they have suggestions and they have criticisms as well as encouragement of the prevention and early return-to-work aspect of this legislation.

I won't go on because I've made this little pitch before, but I believe those are proactive parts of helping the injured worker and encouraging the employer group to get with the game, to modify the workplace, to accommodate the worker and to move forward progressively. That being said, I recognize that the issue of stress and chronic pain has come up a couple of times. You've dealt with it in the health section of your presentation and you've dealt with it very tastefully, I think.

Recognizing your group represents both personnel types and health care professional types — right? In the section, if I could quote, it says here, "For this reason we defer the issue of the medical-psychological to those experts, but state that in our experience" — and you work directly every day, you're not a politician, with these people, real clients, real individuals, real people, you're not —

**Interjection:** A bureaucrat.

**Mr O'Toole:** Exactly. Real people — "chronic pain is influenced by social, emotional, cultural, motivational and many other factors."

Do you have any kind of guideline, because this is contentious, if it's admitted or not admitted. No one wants to deny what's real. What's not real is what you want to deny.

**Mr Christopherson:** You ought to get real.

**Mr O'Toole:** Mr Christopherson has demonstrated once again that if it isn't his way, it's wrong. You see, that's where they lose. I'm asking you, not Mr Christopherson. He has his time in the House, as is appropriate.

**Mr Christopherson:** And you cut that back too.

**Mr O'Toole:** I'm asking if you have any specific guidelines or other comments that you'd like to make with respect to that very sensitive area of stress and chronic pain.

**Ms Hobbs:** We've specifically deferred to the experts in this area. We are rehabilitation counsellors. We work with the end product, once chronic pain or mental stress have been diagnosed.

**Mr O'Toole:** How about the early return to work? Is that really something —

**Ms Hobbs:** Absolutely. It's been proven many times that expedient return to work will help you —

**Interjection:** Psychologically get a sense of self?

**Ms Hobbs:** Yes, you will avoid many of the chronic pain and mental stress problems through an early return to work, where it's handled appropriately. The studies show that the longer a worker is off work the more you start

getting these other factors: psychological disabilities and chronic —

**Mr O'Toole:** Do small employers come to you for that kind of advice?

**The Chair:** Sorry, I think we should move to the Liberal caucus, please.

1150

**Mr Patten:** Thank you for your presentation today. The list of the modalities and techniques that your profession is involved with is quite extensive. This was raised a number of times by employer groups. They were saying that when you go beyond doctors and chiropractors, they are fearful for self-governing, self-regulated associations, because some practitioners are not members and they may not be bound by the ethics of the associations. What is your reaction to that?

**Ms Hobbs:** At this point there is nothing we could do, but that is why we are pursuing government regulation at this point in time.

**Mr Patten:** I noticed in your brief that you were pursuing that. Where is that at the moment?

**Ms Hobbs:** We're at the final stages of preparing the government submission and we're hoping that over the next six months to one year we will have an idea of whether we will be able to achieve regulation under the Ministry of Health.

**Mr Patten:** Of all the functions that you perform — assessment and evaluation, diagnosis and treatment planning, vocational career counselling, individual and group counselling etc — could you take one of those and elaborate a little bit in human terms about your case management functions? What would you be doing with an injured worker?

**Ms Hobbs:** The first step is the assessment and evaluation, looking at the worker's medical condition as well as medical restrictions and functional abilities, the job description, and identifying the best method of returning the worker to that particular pre-accident work if possible, or accommodating or finding alternative employment with the employer. When that's ruled out, then we start looking through the hierarchy of objectives that CARP has endorsed, which is similar to the previous workers' compensation hierarchy of objectives, in an effort to return the worker to the best work for them, looking at their medical restrictions and their work history. It's a long process and, again, it's done on an individual basis, but we always start with the initial assessment, looking at the worker's work characteristics, their medical condition and their abilities.

**Mr Patten:** You're all working through referrals from either the WCB or from a doctor. A patient can't come to you directly.

**Ms Hobbs:** A patient can come to us directly, but the practice is normally that —

**Mr Patten:** It's a referral.

**Ms Hobbs:** — insurance companies pay for our services, as we do expedite the whole rehabilitation process and ultimately bring down their costs.

**Mr Patten:** Do you think Bill 99 places a greater emphasis on vocational training and rehabilitation than is there now?

**Ms Hobbs:** The way we see it they've taken vocational rehabilitation and broken it into two components, one being the return to work and one being the labour market re-entry. They are both components that we normally work through in the rehabilitation process. I hope that by placing the onus of return to work on the employer, it would expedite that return-to-work process, but there again, I would caution that certified professionals or accredited professionals be involved, because it is such a complicated process.

As far as training — I believe you asked about training — I'm confident that it will still be looked at on an individual, as-needed basis, because it's not required in the majority of rehabilitation case management.

**The Chair:** Thank you very much on behalf of the members of the committee. We appreciate your bringing your perspective from your association here today.

#### ONTARIO HOTEL AND MOTEL ASSOCIATION

**The Chair:** Our last presenter this morning is from the Ontario Hotel and Motel Association. Would you come forward, please. Welcome. Please introduce yourself for the Hansard record.

**Ms Ellen Fegan:** Good day. My name is Ellen Fegan and I am the human resource manager for the Waterloo Inn, representing the Ontario Hotel and Motel Association. I want to take this time and opportunity to thank you for the invitation to appear before you today.

The Ontario Hotel and Motel Association members have supported and continue to support the workers' compensation system, but in doing so have recognized the need to correct a system that is badly in need of repair. The case for reform is undeniable. The WCB's unfunded liability has increased by 470% between 1983 and 1994. In dollar terms, it has gone from \$2 billion to \$11.4 billion. In the interim it has dropped slightly but not enough to give any comfort that the crisis has passed. Correspondingly, accident rates dropped 33%, while employer assessment rates rose 46%.

Over the past 10 years, each political party has attempted WCB reform on the basis that the system was in need of major repair. Despite these reforms — the Tories in 1984, the Liberals in 1989 and the NDP in 1994 — the unfunded liability continued to expand. This phenomenon has had the effect of putting at risk Ontario's workers' compensation system and with it the future wellbeing of injured workers.

It is perhaps worthwhile to look back to see why Ontario's workers' compensation system has come off the rails. One has only to look at the royal commission reports of 1950 issued by Justice Roach and of 1967 by Justice McGillivray.

Justice Roach said: "This act should be considered for what it is and was originally intended to be, a scheme by



which compensation is provided in respect of injuries to workers in industry. It is not a system for dispensing charity. It is not special legislation for the purpose of elevating the standard of a group in society at the expense of another."

He went on to say: "I will have occasion to point out later that certain amendments which have been introduced into the act since it originally passed are really in the nature of social legislation and a departure from the original scheme and purpose of the act. The effect of the amendments has been to impose upon industry burdens which should be borne by society generally."

It is interesting to note that Justice McGillivray reiterated in his royal commission report that Justice Roach's comments were still valid. Bills 101, 162 and 165 have only continued to distort the system.

Our criteria for supporting the workers' compensation system have been and continue to be that it is affordable, sustainable and competitive. The current system failed on all three counts. We believe Bill 15 with respect to system governance and administration is now in hand. Uncosted and poorly conceived government amendments and expanded entitlements are being addressed in this legislation and, with certain amendments, we believe will meet the objectives.

Bill 99 is about restoring fairness and equity to the workers' compensation system. It is also about ensuring the system is sustainable into the future without jeopardizing the ability of the system to adequately deal with workers' injuries and employers' ability to contribute.

This legislation is more of an evolution and could best be described as the result of past governments' attempts to correct a system that everyone agreed was in dire need of fixing. Despite the rhetoric which seems to accompany every change in the system, I suggest you will agree the changes are better, or should I say fairer, for both employees and employers.

To truly achieve this notion of real fairness, Bill 99 needs some changes. They are not major but they are critical in our view to having the new legislation meet the test of fairness. I would be remiss in not mentioning our disappointment in the legislation not including the three-day waiting period, as New Brunswick has successfully introduced.

1200

Employers advocate rewriting the definition of "accident," specifying that "accident means" rather than "includes" and adding dominant causation language to strengthen the link between the disability and employment. Employers further recommended deleting the presumption clause, and replacing the "benefit of the doubt" principle with "balance of probabilities" and "real merits and justice."

The following proposed amendments are offered as a guide.

Definition of accident: "In this act, 'accident' means

"(a) a wilful and intentional act, not being the act of the worker,

"(b) a chance event occasioned by a physical or natural cause external to the worker, and

"(c) a disablement caused by the performance of work."

The areas that require amending are as follows:

(1) Wage loss, section 43: Bill 99 calibrates many of the shortcomings of the wage loss process, requiring benefits to be adjusted as the worker's circumstances adjust, a simple principle yet lacking, since wage loss was introduced seven years ago. However, Bill 99 confers extraordinary powers on to the board which may lead to a proliferation of appeals. For example, the bill allows the board to "deem a worker's earnings if" a labour market re-entry plan for the worker has been fully implemented, without defining what is meant by "fully implemented." The government's intentions are lost in this vague language.

(2) Duty to cooperate, section 40: A duty to cooperate for the worker and the employer is a positive innovation; however, much of this section is redundant and already covered under sections 41 and 43. We also cannot agree with the emphasis on fines which, it should be noted, runs counter to the government's own pre-election commitments in this area. The need for employment searches also cannot be supported, as this area is well covered under section 41. Section 40 creates additional and unending legal exposures for employers and needs to be rethought.

(3) Assessment rates, section 80: Bill 99 provides a very broad discretion to the board in setting individual company assessment rates. However, individual disputes are not allowed to proceed to the tribunal. Mistakes will occur in board judgement and therefore disputes must be allowed to proceed to the tribunal.

(4) Stress, section 12: Bill 99 removes the board's jurisdiction to consider claims for chronic occupational stress, which will open the doors for needless courtroom action. It would be better to set out, in very strict language, what the entitlement criteria are and have the board determine these cases.

(5) Appeals tribunal, sections 117 and 118: The appeals process needs reform. The method set out in Bill 99 is not appropriate, as it curtails the policy audit function of the board, for which we believe there is a need. We do agree their board should have control over the entire matter of making policy.

We suggest that where a decision of the tribunal turns upon an interpretation of policy and general law, and the tribunal is of the view that the present policy or the board's interpretation of the policy is incorrect, rather than have the tribunal apply what may be an incorrect or inappropriate policy, the tribunal must be required to bring the matter to the attention of the board of directors. The board would then be required to review the matter of policy and law within a certain time and advise the tribunal of the results of the review.

(6) Non-economic loss, sections 46 and 47: The simplification of the NEL process is appreciated. The drafting error in section 46(2) regarding maximum and minimum payments: As it now reads, the minimum for even a 1%

NEL will result in a \$28,545 payment. It is also suggested to extend the prescribed time for reassessment from 12 to 36 months.

(7) Special reserve fund, section 95: The second injury and enhancement fund has a very long and important history in the workers' compensation system in Ontario. Unfortunately, it has never been explicitly written into law and we believe now is the time and opportunity to do so.

With these amendments, we support the passage of Bill 99. They are required to ensure the successful implementation of the new act. We believe the package can then meet the objectives mentioned earlier: affordable, sustainable and competitive. More money is not the answer, as it has been tried and has failed. The best way to ensure that injured workers have a system in place that will provide the assistance they need is to ensure the passage of Bill 99.

**The Chair:** Thank you very much. We have about three minutes per caucus and we'll begin with the government caucus, Mr Ouellette.

**Mr Jerry J. Ouellette (Oshawa):** Thank you very much for your presentation. Have you had an opportunity to review the functional abilities form?

**Ms Fegan:** No, sir.

**Mr Ouellette:** It is a medical form that's filled out by a doctor which is supposed to aid in the placement of a worker. It gives the limitations of what the person can and cannot do. Do you have any problem with an employer receiving this medical information?

**Ms Fegan:** No. Indeed, I agree that the focus should be on what they can do.

**Mr Ouellette:** On the same basis, as MPPs we receive, or at least I know I do, a lot of individuals coming in with WCB claims and problems. One of the areas is the transfer of information where there seems to be some area of difficulty. On the same premise that the employer receives the information of the employee, do you think then it's only fair that the employee would receive a copy of the information or the form 7 that's being filled out and submitted from the employer?

**Ms Fegan:** Yes, I do agree. In fact, they do now receive a copy. The employee receives a copy of the form 7.

**Mr Ouellette:** It's just a matter of bringing all the information together, because that's one of the biggest problems we find. There's so much information about what's being said about the claim and by the time it comes forward, what one party has said is not clarified. If it had been clarified at the beginning, I think there would be a reduction in the number of appeals that come forward.

**Ms Fegan:** If the employee fully understands what is required of them — I think sometimes the employer is sort of left with the burden of the process. Perhaps the employee needs also to understand that their input and their follow-up and their information and their visits are a necessary part of the process.

**Mr John L. Parker (York East):** How much time have I got?

**The Chair:** You have about a minute and a half.

**Mr Parker:** I wanted to reflect just briefly on your comment off the top that previous governments have also attempted reforms of the legislation. I think that's a point that's somehow gotten lost in some of the discussion we've heard already today, that this is a challenge that other governments have faced and have tried to grapple with.

I'll give you a quote: "We have to get the unfunded liability under control because it threatens the whole system." That is from the NDP labour minister in December 1994.

She also said, "I have to take my responsibility as minister seriously and keep the interests not only of injured workers but of businesses which fund the system in consideration." So it's a balance that must be struck whenever a government deals with this legislation, and it's a balance that this government is trying to strike.

We've heard already this morning that some people on one side of the question are dissatisfied with the reforms that are brought forward in this piece of legislation. I'm interested that you have made quite a strong case that there are other opinions on the other side of the spectrum, as it were, which are also dissatisfied with this legislation. You've put forward something of a wish list from the standpoint of the employers and indicated that you are dissatisfied that this legislation doesn't reflect many of the features that you would like to see in a perfect bill.

I guess my only comment to you is that it is the role of this government to listen to all sides of the debate and to try to find the right balance in establishing the final bill. I thank you for your contribution to that process today.

**Ms Fegan:** We appreciate the opportunity to do so.

**Mr Patten:** I have one comment and a question, related somewhat to Mr Parker's remarks. I think the objective is to provide balance, but it's also to provide fairness and it's also to provide support for people who are injured from working.

My question to you is, when you talk about fairness, and let's put it in the context of employers and workers, most employer groups come in and they say: "We're great. It's terrific." Why not? This legislation favours employers, and much of that is at the expense of injured workers.

For example, they have less benefits now, a 5% loss in benefits for short-term disabilities. Long-term disabilities as well, there's economic loss there. They have less benefits and over time would be considerably poorer. We're not talking about big pensions here. We're talking about very humble pensions; less opportunity for appeal; less eligibility for workplace injuries because they're not easy to identify, so, "Just throw them out"; no representation of workers in terms of labour being represented on the board; and less independent research concerning workplace diseases or workplace injury situations.

So I ask you, when you talk about restoring fairness, where?

**Ms Fegan:** I think that when you have balance, what you determine to be fair is exactly that. I don't think it's been unfair to the worker. I'm not going to respond —



*Interruption.*

**Ms Fegan:** I'll go back to the group that I represent and I'll have them address the issue more specifically to you.

**Mr Patten:** Thank you.

**Mr Christopherson:** I want to tell you, I just seethed through this whole presentation. This is outrageous, and it's outrageous that Mr Parker would continue along the theme of this and talk about fairness and balance. What did he say? "We want to hear from everybody." You're the people who won't let anybody speak, for God's sake. You're the one who shut down the process.

I've just had it up to here with people who come in and refuse to offer up their point of view and leave it at that. If they disagree with me and the others who are here, that's fine, but to come in here as you have done — I'm just so outraged at this, that you mention on one page alone — you talk about fairness —

*Interjection.*

**Mr Christopherson:** Shut up and let me speak.

In this document you've talked about fairness. At least three different times you said, "Bill 99 restores fairness." Then you say, "It's fairer for both employees and employers." Then you said, "To truly achieve the notion of real fairness, Bill 99 needs more changes." You want to give a three-day penalty. That's going to make it even more fair for injured workers.

Then you go on at the very end and say, "The best thing that can happen to injured workers is to pass Bill 99." That's outrageous. If you want to come in and say, "Yeah, injured workers need to be shafted" because you buy the big lie about the unfunded liability, that's fair game. But to come in here and say that this is fair and balanced is bullshit and I just resent the fact that you would say this to these people.

**The Chair:** Mr Christopherson, please. Please, your language.

**Mr Christopherson:** I do not have a question. I will certainly listen to the presenter's opportunity to respond to my comments.

**The Chair:** Mr Christopherson, please, I ask you to think about the language used in this committee hearing.

I thank you very much for your presentation today. It is appreciated.

Ladies and gentlemen, that concludes our presenters for this morning. We will reconvene this afternoon at 1:30.

*The committee recessed from 1214 to 1334.*

#### CHAMBER OF COMMERCE OF KITCHENER AND WATERLOO

**The Chair:** Our first presenters this afternoon are representatives from the Kitchener-Waterloo chamber of commerce. Welcome; if you would introduce yourself for Hansard.

**Mr Jim Berner:** The Chamber of Commerce of Kitchener and Waterloo has over 1,300 member firms and 2,000 reps and would like to thank you for inviting us to

address you today. I am Jim Berner and I am the chair of the federal and provincial affairs labour subcommittee.

The chamber supports the thrust and direction of Bill 99 to promote economic growth and job creation in Ontario by reducing the social and economic cost of workplace injury and illness.

Health and safety in the workplace by the prevention and reduction of workplace injuries and occupational diseases must be the major thrust of the bill. One thing that should be made clear is who will have responsibility for enforcement; who will be responsible for safety audits; how duplication will be avoided between the Ministry of Labour and the board; and who is to be charged with the overall jurisdiction in health and safety.

The definition of the term "accident" should be defined. It needs to address a clear, decisive relationship between an accident or condition and work before compensation is to be issued. If it is not dealt with in the regulations, it should be an item to be considered for future reform.

We support the changes requiring both workplace parties to file claims with the board, limiting claim filing to six months and requiring worker consent for release of functional abilities information. Return to work holds the key to future workplace organization and must become a more common practice in any employment relationship.

The chamber believes no final compensation decision should be awarded until all relevant information from the workplace parties and health care practitioners has been received and considered by the board decision-maker. Also, "relevant information" should be defined to avoid potential conflicts.

Functional abilities information for return to work is necessary for work planning and actual job accommodation. We feel the board, the legislation or the regulations should address several issues to do with functional abilities, including timeliness, penalties for delaying authorizations or the release of the functional abilities information, certification and standards for providers of the information.

Bill 99 has taken positive action by prohibiting compensation for mental stress except for traumatic and acute events, limiting compensation for chronic pain and reducing benefit levels. Lower benefit levels, a reduction in the indexation formula and cost-sharing for the retirement income loss award are appropriate to assure future benefits for injured workers and financial viability of the system.

Consideration should be given to lowering the level to 80%, which runs in tandem with the thinking of employment income legislative changes in the lowering of EI benefits.

We wish to emphasize our belief that Bill 99 should include an explicit provision which indicates that pre-injury income should not be exceeded by compensation benefit awards, including CPP disability allowance, and that economic circumstances alone should not allow compensation to be extended.

Return to work is an obligation and an opportunity for both workplace parties to cooperate and work together to

accomplish this goal. However, possibly through the regulations, this issue of cooperation must be extended to cover all stakeholders including unions, the board and the medical community.

The matter of "contact" should be broadly interpreted. Contact is required to determine both fitness and a timetable for the return to work and it must ensure that it does not constitute harassment.

Subsection 40(5) "may" authorize the board to contact the workplace parties, and no time frame is specified. It is suggested that this intervention or contact should be reviewed and clarified as to intention and time frame, again possibly through the regulations.

Loss-of-earnings and benefit awards: We're concerned by changes that Bill 99 would make to NEL, the non-economic loss procedure. We suggest that the employer participate in the selection of the medical assessor or in the request for a second assessment.

The Workers' Compensation Appeals Tribunal: It is necessary to address the relationship between the board and the tribunal, which have been in conflict since section 86(n) was enacted with the birth of the WCAT.

The chamber believes that the tribunal must continue to be allowed to hear all issues of dispute for appeal purposes. However, policymaking should be under the exclusive jurisdiction of the board. Policy must be the basis upon which all decisions are made for compensation. How can a decision be made if no policy exists? How can consistent decision-making be assured in the absence of clearly written policy? The tribunal must apply and be bound by board policy. Where no policy exists, the issue must be returned to the board for adequate consideration, with the board of directors being charged with overall policy development and dispute resolution authority. The jurisdiction of the tribunal should not allow for the establishment of a separate workers' compensation regime.

1340

Bill 99 provides for performance-based experience rating, which we hope will focus on claim cost issues and cost and frequency issues. The government's and workplace parties' commitment to health and safety and return to work will ensure the continued success of experience ratings.

We noted that Bill 99 is silent on issues to do with a second injury fund, a statutory inclusion we have supported for some time as a fundamental principle of an insurance-based compensation program. The second injury and enhancement fund, SIEF, used by the board is essential in distributing the real cost of a claim and for ensuring equity in experience ratings. We continue to believe that SIEF should be codified in the statute or addressed in the regulations.

As a postscript, we would like you to know that we have reviewed the comprehensive submission of the Employers' Advocacy Council. Rather than plagiarize their comments, we'd like you to know that we support the recommendations they have put forth. Thank you. Questions?

**The Chair:** Thank you very much. You've given us about four minutes per caucus for questioning and we'll begin with the Liberals.

**Mr Hoy:** I have one question I'd like to ask you. At the very beginning, when you were talking about injury and illness prevention and that duplication should be avoided between the Ministry of Labour and the board and who is to be charged with the overall jurisdiction in the health and safety area, what is your opinion of who should have that authority?

**Mr Berner:** I think that's for you guys to decide. I don't care who has it just so long as one party looks after it. If the Workers' Compensation Board looks after it, they shouldn't have another appeal field back to the ministry, and vice versa; if the ministry looks after it, then it's out of the board's hands. Someone should look after workplace health and safety and it shouldn't be split between the two is what we're trying to say. It should be one group.

**Mr Patten:** I have a couple of questions. We had, over the course of the hearings, various people testify or share their views: medical practitioners, researchers, different practitioners. It seems that most employer groups or chambers are happy that the compensation for mental stress, except in a very limited way, is done away with. I gather people feel there was abuse of that in some manner.

**Mr Berner:** Abuses of what, sir?

**Mr Patten:** Of claims for mental stress.

**Mr Berner:** I see, yes. Go ahead.

**Mr Patten:** We had two research doctors here yesterday who I thought were quite illuminating in their presentation, which suggests that we're probably in a better position today to be able to pin down the justifiable cases that really warrant support. We also had testimony from some legal counsel that the removal or limitation of mental stress and chronic pain was probably going to place the new board in a position of being challenged by the court or taken to court under the Human Rights Code. I wondered if you were aware of that, and if you are, what your response would be.

**Mr Berner:** You said they'd take them to court under the Human Rights Code.

**Mr Patten:** For being discriminatory when in fact —

**Mr Berner:** Are they discriminatory unless it's work-related? If it's work-related, yes, but that has to be proven. We've addressed that somewhat. I think it's here somewhere.

**Mr Patten:** It's on the top of page 2.

**Mr Berner:** It's limiting compensation for chronic pain, so chronic pain isn't out, and mental stress except for traumatic and acute events. I would think that would prove it's work-related. Workers' compensation is a work-related fund. It's not for anything that you might be —

**Mr Patten:** I'm not challenging that. I'm assuming everything is work-related. I make that assumption about the justification of any claim. I'm saying that the definition as proposed under the bill, I'm advised, is weak and it won't stand up because there are many situations where



people suffer. We had, for example, the registered nurses' association. You can imagine registered nurses — and I know this from personal experience — working in intensive care in the children's hospital, for example. They circulate those nurses because the tragedies they experience with children and infants and babies who die and this kind of thing is so stressful —

**Mr Berner:** I'm not arguing that. If it's work-related — you're saying, "How do you determine whether it's work-related?"

**Mr Patten:** I'm challenging that it's limited to "a traumatic event." In fact, many situations are a series of events that happen, so you can't necessarily pin it down to any one single event. It may be the situation overall or it may be a series of events and not simply —

**Mr Berner:** It's your call; just as long as it's work-related is what we're concerned about.

**Mr Patten:** I agree.

**Mr Bisson:** A couple of questions: I'm intrigued yet again by your position on the removal of the ability of WCAT to address issues of policy. Do you do a lot of work with the compensation board in the sense of bringing cases through the board either for employers or injured workers?

**Mr Berner:** No, I'm with the chamber of commerce.

**Mr Bisson:** I'm just wondering. You have members in your chamber of commerce. As an MPP I represent employers of the province with WCB as well.

Just so that you understand, the problem I have is with what people seem to be missing on the question of WCAT. The number of claims I as a member will bring to WCAT in a period of a year is very small. Very few claims actually go to WCAT. The ones we bring to WCAT are brought before the tribunal for one of two reasons: One is because there's been an inability of the board to interpret or a mistake by the board in interpreting policy, so you go to WCAT if you can't win it at the appeals level. But I would suggest to you that it's the minority of cases I'll bring to WCAT. More times than not I'll go to WCAT because the policy is unclear on an issue and the adjudicator or the appeals officer cannot make a decision in favour of what is clearly a workplace incident because the policy doesn't quite address it. It's like you have to meet four criteria and you only meet three, or whatever the situation might be.

When I hear the chamber of commerce and other employer representatives coming before us and saying we should take away the ability of WCAT to make decisions on questions of policy, you're really taking away the ability of the system to react to what's going on in the workplace. If you have a lot of people upset with this provision, I need you to understand that you're saying the politicians will decide what's compensable — in this case the Tories, the next time us or the Liberals — and then workers, or you as an employer, will have absolutely no say about what happens. I'm not prepared to give the NDP, the Liberals or the Tories that kind of power. That's my basic problem, so that you understand where we're coming from.

I want to get to the second point, which is the question of limiting compensation for chronic pain. Again there seems to be a lack of information here. The number of people who are receiving chronic pain in the community of Timmins, the injured workers I represent, are few and far between. I can tell you in the last seven years I've probably dealt with a total of five claims that dealt with chronic pain, of which only one has ever been awarded. What people fail to realize is that the threshold for getting a chronic pain entitlement is quite high and that there are criteria you need to meet. It is difficult enough as it is to get, and the board does not give it frivolously, let me tell you.

The reason for the policy is that in some cases the injury is incompatible with the organic finding. In cases like that, the board sets policy through WCAT to recognize that sometimes you just can't explain what's wrong with somebody. All you know is that the symptoms demonstrate that there is a relationship between the pain and the workplace but you can't explain it by an organic means. So chronic pain was established.

### 1350

When the chamber of commerce and other employers come before us and say, "Get away from chronic pain," you're again telling me, put the power in the hands of the politicians to decide who gets compensated for what. Leave all common sense out of it. Leave the doctors out of it. Leave the specialists out of it. Leave the employers out of it. Leave the injured workers out of it. Let the politicians make the decision.

**Mr Berner:** That may be your view; it's not mine. I think you should have a ruling that somebody's got to be responsible for policy.

**Mr Bisson:** That's what WCAT is.

**Mr Berner:** You can't have WCAT and the board responsible for policy.

**Mr Bisson:** No, no. You have to understand how the process works. WCAT makes the recommendation to the board based on their finding, and then it's up to the board to decide in the end if they're going to implement. If not, you have judicial review. There are checks and balances in the system, and I put to you that it is not frivolously used. The board and WCAT take their responsibility quite seriously, and you don't win a WCAT decision out of thin air. You really have to have the evidence to win. You need to understand.

**Mr O'Toole:** Thank you very much, Mr Berner, for bringing the point of view of the chamber to our attention. You, along with many other presenters today, have seen that there are changes, and changes are needed. That's the history we've heard from almost all presenters. All presenters, including you, have recognized the need for change, right from 1984 through the previous governments' two attempts and our attempt as well. We're here to listen, and your input is important and valuable.

We've heard on a couple of occasions — I'm referring to part I, the definition section. The whole purpose, the philosophy of the bill, is the prevention section and the promotion of prevention, and also the return to work: early

intervention, the return to work, ameliorating the work-place to meet the needs of the worker.

I've heard repeatedly the need to redefine the "accident" definition. Of course you know that in the reform attempted by the Liberals in 1989, and in Bill 162 and Bill 165, they did not deal with the definition of "accident." I've heard repeatedly that there's a need to redefine the definition of "accident." Perhaps you could give me your impression, knowing this is a double-edged sword: "work-related" and "accident"? Could you give me a couple of response lines on that, please?

**Mr Berner:** My response to that is basically what we say here, that "accident" should be defined so that everyone realizes it has to be work-related. You can't trip at the cottage or something like that and claim a back injury that didn't happen at work. It has to be work-related.

**Mr O'Toole:** This is unresolved. That's why it hasn't been defined, because first of all it must be clear that workers are entitled to work-related accident compensation. No one here in the government would dispute that. But there is a concern, and I'll just relinquish the rest of my time to Mr Maves. He may have a further question along that line.

**Mr Maves:** On subsection 118(2) with regard to the WCAT and the board policy, Mr Bisson I think just said that the majority of the cases he takes to WCAT are where there are no board policies. The act says at 118(2) that if there is no board policy in existence, "the tribunal shall hear and decide the appeal without considering a board policy." I think that still gives the WCAT quite a bit of leeway to decide cases where no policy exists, which he said the majority of his cases were.

What I wanted to get to you about, though, is that you have said on return to work, "This issue of cooperation must be extended to cover all stakeholders, including unions, the board and the medical community." Subsection 40(5) says the board may become involved with the return to work. You think as an employer that it's also quite important that the board be involved in some manner with the employer and the employee on return to work?

**Mr Berner:** Only if they have to. Who wants the board sticking their nose in if you can get that worker back to work? The main thing is to get the worker back to work. But the board may authorize contact, and if so, there should be a time frame, is what we're saying. It's got to be within, what, six months, say, a year.

**Mr Maves:** With injuries where people are back to work the next day or in a few weeks, which are very common, I can understand why the board wouldn't necessarily have to be involved in that.

**Mr Berner:** I think what they had in mind here is return to work where someone was injured and has to come back into a different job, probably. That's probably the concept we're trying to get here. If that's the case, if there is to be contact it should be within a certain time frame after the accident, I suggest.

**Mr Maves:** Last, in terms of the second injury and enhancement fund that the board has been using, you feel that's worked well in encouraging employers to hire pre-

viously injured workers? Do you think that's been successful?

**Mr Berner:** I think it's worked, but we feel it should be codified or put into the regulations.

**Mr Maves:** If it's not codified now and the board uses this fund, what makes you think the board will no longer adopt the use of the fund?

**Mr Berner:** I don't think they won't. It's just that Bill 99 is silent on the issue.

**The Chair:** Thank you very much, sir, for coming before us this afternoon with your presentation. It is appreciated.

## ONTARIO TRUCKING ASSOCIATION

**The Chair:** I now call representatives from the Ontario Trucking Association. Good afternoon, gentlemen, and welcome.

**Mr Michael Burke:** Thank you, Madam Chair and members of the Legislature. My name is Michael Burke, and I am the manager of government relations with the Ontario Trucking Association. With me today I have Mr Paul McNamara, president of Transfreight McNamara, a for-hire trucking company based in Ayr, Ontario, and a local employer. Also with me is Mr Michael Mitchell, vice-president, consulting services, L.A. Liversidge and Associates, a management consulting firm specializing in workers' compensation issues and also a member of the Ontario Trucking Association.

I'd like to provide you today with OTA's perspective regarding Bill 99. We appreciate the opportunity to appear before you.

The perspective OTA has taken reflects the fact that Bill 99 itself is not radical, as its opponents like to suggest. Rather, it reflects a responsible and effective maturing of the last three somewhat incomplete attempts by each of the previous three governments at reform of the Workers' Compensation Act.

Moreover, Bill 99 does reflect a change in direction and provides the foundation for long-term and meaningful reform of the workers' compensation system. One of its strengths is that it will result in increased employer and worker accountability, coupled with a higher expectation for worker-employer-board cooperation.

Bill 99 effectively calibrates many of the shortcomings of the existing wage-loss model, requiring benefits to be adjusted as the worker's circumstances adjust. While this may sound like a simple principle, it has been lacking since the wage-loss model was introduced seven years ago. In addition, OTA is encouraged by the changes to the benefit delivery model, which addressed many of the shortcomings of the present future economic loss process.

However, this does not mean that Bill 99, as it is currently drafted, is without problems. The OTA committee looking at Bill 99 has identified some drafting errors that if not addressed could have the potential to undermine the government's reform goals as well as underline some existing inequities. Moreover, we are concerned with the



longer-term impacts that Bill 99, as currently drafted, would provide the WCB.

I'd like to talk, before I go into the detail, a little about the organization I belong to and the importance our members place on the issue of workers' compensation. I feel it's relevant to this discussion. The Ontario Trucking Association is a founding member of the Employers' Council on Workers' Compensation, which has been extremely active with respect to workers' compensation reform for over two decades, and we're very pleased to provide our comments and suggestions for improvement to Bill 99, the workplace safety and insurance reform act.

#### 1400

The effective functioning of the Workers' Compensation Board and issues relating directly to that agency are of primary importance to OTA, a trade association that represents approximately 800 trucking and trucking-related companies, Mr McNamara's company among them.

The association maintains a committee that deals exclusively with workers' compensation matters. It is through the efforts of that committee that OTA strives to ensure that injured workers receive effective treatment, rehabilitation and eventual reinstatement through workers' compensation programs. In addition, it is equally important to OTA that the workers' compensation system is sustainable from an economic perspective and does not place an unfair burden on the employers, who are ultimately responsible for sustaining it. In essence, what we support and what we would like to see maintained, that we're hopeful Bill 99 will eventually ensure, is a balance of interests.

Without far-reaching fundamental reform, that objective clearly will not be met and is in jeopardy. With an overall unfunded liability in excess of \$10 billion, with the prospect within the trucking industry of higher assessment rates in spite of a declining accident rate, which I'll speak to later, we have been pessimistic in the past that real reform, designed to ensure the sustainability of the system, will emerge. In a labour-intensive industry such as ours, facing increased international competition, workers' compensation is a critical factor in the survivability of many of our members. Ultimately, jobs are at stake.

Where are we at and where are we going? OTA is very encouraged with the commitment this government has shown so far with the desire to deal with the crisis in workers' compensation as a priority early in the mandate. With the passage of Bill 15, the first small steps were taken. However, unless assessment rates continue to fall and the upward pressure that's been on them the last few years is reversed and the drain on the system is abated, workers' compensation will continue to be a negative economic influence, and that ultimately means jobs will be in jeopardy. Those jurisdictions with a lower cost base will have a significant competitive advantage, and this is particularly true in a labour-intensive industry such as trucking, and might I add, an industry that operates across borders.

Trucking is a labour-intensive industry. When you look at information provided by Statistics Canada, they'll tell you that wages account for —

**Mr Bisson:** Very low-paid.

**Mr Burke:** Very low-paid but very high-wage. We've got to do something about the rates. We're looking at about a 32.5% total operating cost for Canadian motor carriers. It's the single largest component of cost. For some carriers the share of wages can reach as high as 50% of total costs. That being the case, payroll taxes, including workers' compensation premiums, impact labour-intensive industries such as trucking much more harshly than capital-intensive industries.

Let's have a look at the cost implications. In 1996 the trucking industry rate group was the largest single-industry rate group contributor in terms of total assessment dollars paid to the WCB, accounting for over \$144 million in 1996. Significantly, the lion's share of that assessment, \$80.4 million, or 56% of the total assessment, was received from only 241 trucking companies out of a total population of 7,165 trucking firms that report to the Workers' Compensation Board.

For 1997 the average assessment rate applied to business in Ontario was approximately \$2.85 per \$100 of payroll. However, for the trucking industry, the 1997 assessment rate is over two and a half times that average: \$7.16 per \$100 of payroll. It is a big and significant cost of doing business.

Also, the assessment paid per worker has risen equally dramatically over the last decade. For 1997, at the maximum assessable earnings ceiling, every trucker would account for about roughly \$4,000 in assessment, up from approximately \$2,100 in 1987.

Obviously, a big part of keeping costs down is keeping accidents down and operating in a safe environment.

#### *Interjection.*

**Mr Burke:** There's a lot of different aspects to safety. We'll stick with health and safety today, but I appreciate your interjection and I appreciate the plug.

Throughout the years, the trucking industry has worked diligently to improve worker safety, inspired in part by the new experimental experience rating program. The results speak for themselves. Between 1988 and 1995, the trucking rate group saw its lost-time injury rate decline from 11.8% to 5.69%, a 52.8% reduction. Moreover, the number of lost-time accident claims in the same rate group were reduced by a full 53.4% during that same period, or from 7,555 down to 3,509.

What's been occurring while this has been happening? In Ontario, until the last two years, the trucking industry and other industries have experienced rather significant rate increases. In 1983 Ontario employers accepted a 15% rate increase, followed by 10% rate increases for another three years. At the time, the board informed employers that these efforts would retire the unfunded liability by the year 2014. In 1989 the WCB stated in its annual report that "if the 1989 accident performance is maintained over the long term" it could result in the elimination of the unfunded liability seven years earlier, by the year 2007.

Not only has the 1989 accident performance been maintained, but as demonstrated a little earlier and in much more detail in our submission, you will see that certainly from the trucking perspective, that accident performance has improved significantly. However, as we commonly understand the situation now, the status quo would ensure that the unfunded liability could rise to between \$14 billion and \$18 billion by the year 2014, when we were assured back in the early 1980s that it would drop to zero or be retired at that point.

All Ontario businesses, including trucking, feel a little wary. We're a little concerned. We don't feel it's an overstatement to say that we could very well likely be facing a financial crisis. As is blatantly clear, we certainly don't feel this is the result of a lack of funding.

The situation is critical. The cost of workers' compensation cannot simply be passed on to employers through ever-increasing assessment rates. Corporate competitiveness is critical to maintaining jobs and our standard of living. This is one program that is in urgent need of reform. The WCB cannot rely on assessment rate increases to resolve its financial difficulties.

This takes us to Bill 99. It takes us to our potential solutions and change in direction, so let's look at where we're going from here.

Overall, as I indicated earlier, we support Bill 99 — there are some changes needed — provided that those changes occur. We view Bill 99 as an intelligent refinement of the last three major legislative reforms and find the themes we introduced over the last decade or more to be respected but improved upon.

We are disappointed by some of what was not in Bill 99. We are disturbed that the three-day waiting period was not introduced and that those appropriate changes were not made to the definition of "accident." Both of these were long-standing Progressive Conservative Party commitments, and we encourage the government to honour those commitments. I would also add that those provisions have been enacted in other Canadian jurisdictions as well. We certainly wouldn't be blazing a trail in this respect.

With respect to the bill itself and what changes we'd like to see and what we'd like to see implemented:

Section 40, duty to cooperate, on pages 22 to 25 of our submission: While OTA supports the emphasis on cooperation, much of section 40 is redundant and is already covered under sections 41 and 43. The OTA rejects the emphasis on fines, which runs counter to the Progressive Conservative Party of Ontario pre-election commitment. We do not support the need for employment searches, as this is well covered under section 41. Section 40 creates additional and unneeded legal exposures for employers.

Section 42, labour market re-entry plans, our page 28: The labour market re-entry process will work for larger employers; however, we are concerned that time on claims may actually increase for medium and smaller employers unless the need for board resources is defined early.

Section 43, wage loss benefits, pages 29 to 43: While we support this intelligent refinement of the benefit model that addresses many of the shortcomings of the present

FEL process, new pitfalls are introduced. Most important, the meaning of "fully implemented" under subsection 43(3) must be defined. It is suggested that "fully implemented" be defined as meaning once it can be considered that an "impairment of earnings capacity is no longer significantly greater than is usual for the nature and degree of the injury."

#### 1410

In addition, either in the act, regulations or in the memorandum of understanding between the board and the minister, an incrementally progressive management authority must be called upon as duration in benefits increases.

Sections 46 and 47, non-economic loss, pages 47 to 50: OTA appreciates the simplification of the NEL process. It is necessary to correct the drafting errors in section 46(2) regarding maximum and minimum payments. As it now reads, the minimum for even a 1% NEL would result in a \$28,500 payment. In addition, we recommend extending the prescribed time for reassessment from 12 months to 36 months.

Section 80, employer assessment rates: As I alluded to earlier, this is obviously something that is of great concern to us and our membership. Section 80, subsections (4), (5) and (6), provides a very broad discretion to the board in setting what would appear to be prospective assessment rates. Disturbingly, individual disputes are not allowed to proceed to the tribunal as the lawful jurisdiction of the tribunal is, in our view, inappropriately curtailed. Inevitably, errors in board judgement will occur. The tribunal must be provided with the legal jurisdiction to consider disputes arising from the application of these sections. To ensure government control and authority over the board's employer taxing methods, the methods for section 80(4), (5) and (6) must be prescribed in regulations.

Section 95, special reserve fund: The Ontario second injury and enhancement fund has a very long and important history in the Ontario workers' compensation system. Though it has never explicitly been written into law, we feel that it should be.

Section 118, tribunal jurisdiction: We cover that on pages 64 and 68. While OTA agrees that reform of the appeals process is called for, we disagree with the Bill 99 changes and offer a more appropriate model. Specifically, we disagree with the manner in which the tribunal's powers have been curtailed and we wish to see the tribunal continue with a policy audit function, while still ensuring board of director control over policy.

We recommend that where a decision of the tribunal turns upon an interpretation of policy and general law, and the tribunal is of the view that the present policy or the board's interpretation of the policy is incorrect, rather than have the tribunal apply what may be an incorrect or inappropriate policy, the tribunal must be required to bring the matter to the attention of the board of directors. The board would then be required to review the matter of policy in law within a certain time, perhaps 60 days, and advise the tribunal of the results of the review. The tribunal would be bound to follow the board's direction.



This model ensures that the tribunal plays an important role in auditing board policy over the board of directors' routines, total control over the workers' compensation policy. Again, we spell that out in some detail in our submission.

Jurisdictional considerations for the Workers' Compensation Board, section 4: It's important that the WCB remain mindful of its reach with respect to the exercise of all the powers prescribed in section 4. In the event that the WCB attempts to apply that section in its entirety, the federally regulated undertakings, it could face a jurisdictional challenge. In the past the Supreme Court of Canada has issued a decision confirming what provincial boards do not have the legal jurisdiction to exercise the same authority over federally regulated employers. Consequently, to avoid any potential confusion, section 4 should be amended to reflect the true mandate and powers of the WCB.

The last point I'd like to speak of specifically deals with the whole issue of owner-operator status determination. The issue of owner-operator status determination for the purposes of workers' compensation is something to which the trucking industry has devoted much time and energy. Quite frankly, it's an issue that's very near and dear to our hearts.

OTA has worked diligently to ensure that the basic principle of owner-operator, that being independence, be recognized and respected by the WCB. This was not always the case. OTA would wish to ensure that any amendments to the Workers' Compensation Act respect the fact that owner-operators in the trucking industry are independent from the carriers and should be regarded as such for the purposes of workers' compensation.

OTA is of the view that any requirement for a year's advance payment should not be left to the sole discretion of the board and should not apply to independent operators and companies that are both paying and playing by the rules. Legitimate clients of the WCB should not be hindered or disadvantaged in the board's efforts to collect assessment.

In the event that assessment payment methods were to become unfair or excessive, the result could be to discourage owner-operators from participating in the workers' compensation program. This work would be counter to the objectives of the board and certainly to our association.

If I could just elaborate briefly on that — I don't know how much time I have. One minute? All right. This is something that the OTA has negotiated and dealt with the board on for a number of years, and that was the whole issue of owner-operator status. For many, many years, it was very subjective and up to the interpretation of board adjudicators. Finally, in 1993, we were able to come up with an agreement whereby there was a common understanding of what constitutes independence. Since then, independent operators have been allowed to seek their own file number and individually cover themselves within the board.

It was our intention at the time that, once the rules were clearly understood, more people would be brought into the

process. We understand the board has a problem with independent contractors, but if you're going to start to make these people pay up front for everybody, you have the potential to drive them out of the system, which is counter to both the board's ultimate objective and desire and ours.

With these changes, the Ontario Trucking Association provides its full support to Bill 99 along with its commitment to ensure the successful implementation of what we consider to be pivotal legislation. Without these changes, Bill 99 may actually impair the government's ability to attain its workers' compensation reform objectives.

Thank you for your time and your indulgence. Everything we have to say is spelt out in some detail in our submission. I encourage you to have a look at it. Thank you once again.

**The Chair:** Thank you very much. You have given us some homework and we will diligently take careful note of these suggestions. Thank you for your contribution this afternoon.

#### ONTARIO HOME BUILDERS' ASSOCIATION

**The Chair:** Our next presenters represent the Ontario Home Builders' Association. Good afternoon, gentleman, and welcome. Be so kind as to introduce yourselves for the Hansard record.

**Mr Byron Scott:** Good afternoon, ladies and gentlemen. My name is Byron Scott, and I'm chair of the Ontario Home Builders' Association health and safety committee and also safety manager for a large diversified building company based in Toronto. With me today is OHBA staff member Mr Andy Manahan, who is director of industry relations.

I should note that OHBA is an active participant in the Employers' Council on Workers' Compensation and we support the remarks that ECWC made to this committee in mid-June. We believe that the proposed reform package will benefit both workers and employers and that some of the rhetoric surrounding this topic has not been helpful in implementing the necessary changes. We support the direction enunciated by the minister to focus on accident prevention, to enhance workplace self-reliance and to improve return-to-work performance.

The Ontario Home Builders' Association represents over 3,400 member companies which are organized into 34 local associations across Ontario. Our members produce over 80% of new housing in the province.

The residential construction industry has made great strides in improving its safety performance. The Construction Safety Association of Ontario reported at its spring annual meeting that despite the regrettable increase in fatalities, a record low lost-time injury frequency was established in 1996. In fact, the LTI frequency has been reduced 11 years in a row.

Ontario also continues to outperform every other province in construction safety. Unfortunately, however, our industry is saddled with a much higher assessment rates

than all other provinces except for Quebec, and, in fact, the home building rate group witnessed a 22% annual increase in its standard assessment rate for 1997 to \$9.56 per \$100 of assessable payroll. The median across Canada is \$5.77 for 1997. Target rate predictions for 1998 indicate low-rise residential rates may increase an additional 21%.

**Benefit levels:** There are a number of reasons for this anomaly, including a benefits system which typically provides compensation as high, if not higher, than the worker's pre-injury take-home earnings because of the current practice of 90% net replacement rate. We believe that the proposal to reduce benefit levels should be modified somewhat so that for short-term disablements, the worker receives 80% of net average earnings. This would not be an unreasonable return-to-work incentive and would be an appropriate way to reduce overall duration and cost of claims. However, longer-term disablements should be compensated at 85% of net, as Bill 99 proposes.

#### 1420

**Future economic loss and non-economic loss:** The benefits structure was amended in 1990 under Bill 162 when the dual award system was introduced. While we have no major qualms with the concept, there are cases where FEL pension payments continue to be made even when the material circumstances of the worker have improved. What I mean is the worker has returned to work and has suffered minimal wage loss. Situations like this invite other workers to abuse the system.

A few cases of unwarranted compensation might not result in a major financial burden, but when there is a systemic overcompensation, this creates a tremendous burden for the WCB and the supporting employers. Since these FEL pensions are locked in after a final review five years after the date of initial determination, we are only beginning to feel the true impact of FEL. The first wave of these FEL pensions became locked in last year, and eligible workers will continue to be paid until age 65.

Between 1990 and 1996, construction was essentially in a market trough, and one of the characteristics is high unemployment. Workers who were physically able to return to productive work did not have this opportunity. This is a major reason why the proportion of costs which are attributable to FEL are much higher in construction than other industry sectors. We predict that these costs will continue to grow, even with the positive changes which are being contemplated under Bill 99.

It should be added that when benefits are so generous, there is little incentive for workers to return to work even if work is available. We understand that early return to work is one of the major objectives of Bill 99 and we fully support it.

**Return to work:** As previously indicated, when construction activity was at a depressed level during the early 1990s, there was less opportunity for gainful employment so that workers remained on compensation longer than they normally might have, whether it was in a union environment or an open shop. This obviously increased overall

system costs and resulted in injured workers being on compensation longer than they should have been.

We have reviewed the brief submitted to this committee by the Council of Ontario Construction Associations and the Provincial Building Trades Council on developing a return-to-work regulation for the construction industry and agree with the thrust of their proposals. In construction, return to work is problematic because projects and specific tasks performed by subcontractors and their trades are short in duration. We have, in the past, suggested that a credit, through our experience rating program, be given to a non-accident employer who offers modified work to an injured worker. While this may add a small degree of complexity to the CAD-7 program, it would encourage return to work in our cyclical residential construction industry.

In addition to encouraging greater cooperation in return to work between employers and workers, there needs to be a stronger link with, and perhaps incentives for, the medical-rehabilitation professions to facilitate timely return to work.

I will now turn the balance of the presentation over to Mr Manahan.

**Mr Andy Manahan:** I'm going to talk about the three-day waiting period now. OHBA has been advocating the implementation of a three-day waiting period in Ontario for a number of years. For example, in March 1995 we told the Royal Commission on Workers' Compensation that this approach should be investigated: "There needs to be more time to assess moderate injuries and arrange modified work in consultation with the medical practitioner before the case becomes a lost-time injury and the experience rating incentive is lost." When there are relatively minor circumstances that may require medical attention, the possibility of a lost-time injury diminishes the frequency incentive that is part of CAD-7.

Unfortunately, we understand that the Minister of Labour has rejected the notion of a three-day waiting period for three reasons. We will cite the comments made by the minister at the ECWC conference almost two months ago and then provide what we believe are logical answers and/or solutions to the minister's concerns.

First, the minister stated that, "There is no compelling evidence that a waiting period by itself has any significant impact on workers' compensation systems."

OHBA's response is that while the statement by itself may be true, OHBA received correspondence from the chair of the New Brunswick Health, Safety and Compensation Commission, which is appended to this brief, and the letter states, "The impact of the waiting period has been significant, but cannot be examined independently from the other legislative changes which took place in 1993" in New Brunswick. "We are unable to unwind all these changes into single components." This program is viewed as a success in New Brunswick because of its role as a gatekeeper to the system, and the commission continues to use a three-day waiting period.

The second point the minister makes is, "It penalizes workers who are legitimately injured, particularly workers



whose duties expose them to danger such as police and firefighters."

OHBA responds that the New Brunswick commission, as part of its consultation process which began last year, has heard that emergency workers should not be subject to a three-day wait while in the line of duty. By this fall, the commission will be making recommendations with regard to legislative change for injuries sustained by these workers, and we don't see any difficulty with an exemption being created for certain workers.

Another solution that OHBA would put forward is to adopt a voluntary three-day waiting period which employers may decide to use.

The third point that the minister made in June is that "such an amendment would have required inappropriate intervention in collective bargaining relationships, since the benefits waiting period, to be effective, would have required a prohibition on negotiated top-ups."

OHBA responds that we believe that if the government is able to facilitate an orderly transition for public sector workers in the complex area of hospital and school board amalgamations and mergers, then surely this aspect could be handled relatively easily.

CAD-7: We believe that financial incentives or penalties have proven to be a useful method to influence site safety through the internal responsibility system. In construction, a separate experience rating program was created, and this has proven to be an effective way to encourage accident prevention. In fact CSAO confirmed in its 1993 annual report that CAD-7 "has played a major role in reducing Ontario's lost-time injury rate." CAD-7 has been so successful that there has been a slight off-balance compared to the board's other experience rating program, NEER, which has a much larger off-balance, and this is because the board has in fact underestimated our industry's ability to reduce its rate of lost-time injuries.

What is required is a way to make the rebate potential more meaningful for small construction firms. We understand that the board of directors of the WCB will be meeting tomorrow in Ottawa to discuss a proposed small employer experience rating program. These discussions are most welcome, but unfortunately there has been limited communication with the construction industry as to how to make this program work most effectively. The analysis which the board staff recently showed us on August 1 lumped non-construction, or the NEER rate groups, in with our industry, and we requested more specific data. Again, we have a letter that was jointly submitted by the Council of Ontario Construction Associations and the Ontario Home Builders' Association and submitted just yesterday to the board, and Glen Wright in particular.

Without going into great detail, the attempts to achieve greater return to work in Bill 99 might be thwarted by the simplified plan outline we have seen. That is, the new rating system which will determine a firm's rebate or surcharge status will be based solely on claim counts rather than the current combination of frequency and

costs. I should add that this is a relatively easily understood system for employers in the construction industry. We would suggest that incorporating costs, while somewhat more complex, would result in greater equity and better potential for return to work. A system where one LTI results in a neutral status, that is, does not result in either a rebate or a surcharge, will negate our attempts to achieve return-to-work objectives because the costs of one injury, and perhaps even potential FEL costs, will not be as great a concern for an employer.

Finally, fraud: OHBA fully supports the steps that have been taken by the board to stem fraud, whether it emanates from employers, workers, physicians or even board staff. We applaud the board's recognition of this serious problem and the approach which will be taken to send a clear message that fraud will be punished. In the long run, this will enhance overall system health and will allow the board to assist those injured workers who truly need compensation. Again, the role of the medical profession is critical to the success of fraud prevention efforts, and we trust that the board will continue its efforts to improve communication with this community.

The new name for the board, WSIB, may not roll off the tongue as easily as WCB, but it is symbolic of a fresh start for this institution.

To conclude, we support Bill 99 with the modifications that we have suggested. We urge the committee to help expedite this reform process so that the changes can go into effect by January 1, 1998.

Byron Scott and I would now be pleased to answer your questions.

**The Chair:** Unfortunately, there isn't time for questions, but we do appreciate your offer.

**Mr Manahan:** I thought we had five more minutes.

**The Chair:** You're absolutely right. I've been doing this too often, I guess. I sincerely apologize. You do have five minutes and I'll extend it by a minute because of my error so that each caucus can question you. We'll begin with the government caucus.

1430

**Mr O'Toole:** Just a quick question; I'll share my time. You mentioned in a couple of places in your presentation the NEER and CAD-7. You also talked about a credit system for those other employers that may take on an injured employee because the job site may be vacated or whatever. Do you think, in the experience rating system, whatever we call it, the return-to-work performance should be part of the NEER or the formula? Is this really what you're leading to?

**Mr Scott:** What we anticipate is that, unfortunately, jobs don't come up in sync with the accident problem. We thought we'd try to get the industry to be proactive, and that whenever they're filling a position that would be suitable for an injured worker, they think of the injured worker first and try to get these people employed and off the workers' compensation expense.

**Mr O'Toole:** It could be a NEER credit for another employer.

**Mr Scott:** What we anticipate is that return-to-work will be mandatory and this way you have a credit. If you have the unfortunate circumstance of having an injured worker you can't accommodate, you've already got a credit for having done so.

**Mr Maves:** Just quickly, on the three-day waiting period, you spent some time on that. I would add to the minister's statement that, with police and firefighters, there are probably a lot of jobs that are dangerous. When someone gets an injury I don't see how it's fair to penalize them for having that injury, for three days. That's why I didn't support that myself. Also, isn't it a bit of a disincentive for employers, if you have a three-day waiting period, with regard to accident prevention because it relieves the employer of the costs of short-term claims?

**Mr Scott:** It's part of the mechanism of CAD-7 in construction. This is why we're attuned to that. A lost-time injury of course means a large hit on the rebate, particularly for a large employer. We think there should be a reasonable assessment period for a minor soft tissue injury so that the physician has time to assess it; there is time for modified work to be organized without penalizing the employer to the extent that happens with the CAD-7.

**Mr Agostino:** I would ask you about one provision of the bill and that's the part that will have workers apply directly to WCB themselves once an injury occurs in order to begin the process of the claim. In your industry — I know from the people I represent — it probably would have a higher than average number of individuals whose first language would not be English, who have difficulty reading or filling out these type of forms or going through the process.

In my own riding I have many Italian and Portuguese construction workers who would have a difficult time with the language barrier. Do you not see that as a barrier to many of the workers who would be involved in your industry, that change that would then force individuals to have to begin the process of the claim on their own and may discourage or make it difficult for some of those people who put the wrong information down, which may delay or even hinder their claim? Do you see that as a problem? Would you recommend that this be changed to make it easier for the workers who'd be in your industry?

**Mr Manahan:** That's an excellent question. In fact, we recognize that through some of the health and safety training we're trying to do through the Construction Safety Association. We try to cater some of our programs to non-English languages. In terms of filling out forms and so forth which may be in English, it's my understanding that the board already has in place a number of staff who could help out if you have a non-English-speaking person who calls up the number. They do have forms which are in different languages as well. I don't foresee that as being a major problem, although I'm not aware of all the details of the administration with the board.

**Mr Agostino:** Do you not think it would make it easier for your workers, from a process point of view, to keep that portion of the system the way it is to avoid that difficulty, an injured worker having to call WCB saying,

"Help me fill out my form on my injury?" It just seems like a bizarre system they would have to use to even begin a claim. I just see the workers in your industry would be affected tremendously by this particular change, where now you can go to the doctor and begin the process at that stage and those types of things.

**Mr Scott:** I see it as a way to curb claims that seem to come out of left field. What employers should be doing is sending in the form 7 the way they always have and then, as I understand it, the worker will be sent the forms and then he must respond in order to start the process going from there on.

**Mr Christopherson:** Thank you for your presentation, gentlemen. You state in your second paragraph that you "believe that the proposed reform package will benefit both workers and employers and that some of the rhetoric surrounding this topic has not been helpful to implementing the necessary changes." Two questions: (1) What part of this reform package do you think benefits injured workers? (2) What part of what their representatives are saying do you consider to be rhetoric?

**Mr Manahan:** Perhaps the first thing that comes to mind is that the view over many years is that the WCB is something that can be tapped into. There have been a lot of publicized cases of fraud, of people abusing the system, and we said whether it's employers or workers. We believe that —

**Mr Christopherson:** Sorry, what percentage do you think are frauds?

**Mr Manahan:** I don't have the figures on that. Actually, Glen Wright, who we met with recently, said there are perhaps a lot more cases of fraud than they're even aware of.

*Interruption.*

**Mr Manahan:** If I could just answer the question, please. The long-term health of the Workers' Compensation Board is very important. If we're talking about rhetoric and trying to keep benefit levels to 90%, I don't think we can sustain the benefits to injured workers who are legitimately injured that we would like to. I think that's the biggest issue right here, right now. An unfunded liability of \$11 billion is not sustainable.

*Interruption.*

**The Chair:** Order, please.

**Mr Christopherson:** Do you really think you'd feel the same way if there were \$6 billion being taken out of your pocket by way of a 5% increase in your premiums and that being handed over to the injured workers behind you? That's exactly what they're facing. The members of your organization got a \$6-billion gift and the people behind you got a \$15-billion —

**Mr Manahan:** If you re-read our brief you'll notice that the construction rate groups have had increases of 22% last year and we're expecting another 20% increase this year.

**Mr Christopherson:** You were part of the average 5% cut, were you not?

**Mr Manahan:** No, we didn't get any cuts at all.



**Mr Christopherson:** You were excluded from all the other cuts that took place.

**Mr Manahan:** There was a 5% cut to the overall target rate, but that didn't affect us at all.

**Mr Christopherson:** You're not going to see a dime out of any of that.

**Mr Manahan:** No.

**Mr Christopherson:** Could I ask the research then, because that's new information to me and I'd like to have that clarified if you would. The second thing is, you raised the issue of —

**The Chair:** We are out of time.

**Mr Christopherson:** But you will ask legislative research to address that question, please.

**The Chair:** Yes, I believe that's been duly noted.

**Ms Lorraine Luski:** And the question is?

**Mr Christopherson:** The construction industry is indicating that they got no benefit at all of the 5% premium reduction. That's news. I would just like to get that documented if I could.

**Ms Luski:** I think Mr Maves has indicated you would get that information. Is that acceptable?

**Mr Christopherson:** Yes it is. When, Bart?

**Mr Maves:** By the end of the day.

**The Chair:** Gentlemen, I thank you. I do apologize again; it was not intentional.

#### WATERLOO REGIONAL LABOUR COUNCIL

**The Chair:** Our next presenters are representatives from the Waterloo Regional Labour Council, Local 1986, please. Good afternoon; welcome. Would you please introduce yourselves for the Hansard.

**Ms Denise Carter:** I'm Denise Carter; I represent Waterloo Regional Labour Council.

**Mr Tom Rooke:** My name is Tom Rooke; I'm president of Local 1986, Canadian Auto Workers.

**Mr Bob Cruikshank:** Bob Cruikshank, president of Waterloo Regional Labour Council.

**Ms Carter:** I will be doing the presentation this afternoon. I would like to thank all the committee members, especially since all of you are ministers of the Ontario Parliament. You were elected to represent over 10 million of the people who live and work here in the province of Ontario.

First, I would like to take this opportunity to assure Minister Witmer that our concerns as expressed here today, as well as this morning, are by no means a media circus event. These attempts to get the attention of the government of Ontario are real, genuine, true fears being expressed by the people she is elected to represent.

I thank you for the opportunity to speak for the thousands of working people who live and work here in the Waterloo region. Please understand that I'm not going to confine myself to the representation of those who are part of the current unionized workforce, but I will be speaking of those currently unemployed due to injury on the job and those who will hopefully be part of our economic future. I

will be speaking of and for the people who produce the products that are created and that bring into being profit.

#### 1440

Money and those that trade in money are not my concern, because money creates nothing but more money and then only through the efforts of workers. I would like to remind you, the ministers of the people of Ontario, that the purpose of the Workers' Compensation Act was twofold. Part one was the protection of workers, and second, the act was designed to save employers from being sued by injured workers. The proposals in Bill 99 diminish and in some cases eliminate the protections for workers in Ontario.

First, I would like to speak of the current act and some of the things we have found out about its application. Sitting behind me here in the orange shirt is Lionel Walsh. Lionel Walsh was the Canadian champion in small bore .22-calibre silhouette target shooting. As you can see, Lionel Walsh is fit in appearance. Lionel Walsh appears to be a healthy, working citizen. But Lionel Walsh is an injured worker. Lionel Walsh is a 60-year-old man who has put in over 45 productive years in the workforce. Lionel Walsh is a man who, except for injuries suffered on the job, would be a productive member of society producing products for one of our manufacturers to profit from.

But Lionel is about to lose his moderate home. Lionel Walsh and his family must exist on the \$584 his spouse earns every two weeks as an attendant at a gas bar. Lionel Walsh has been told that because he cannot do so-called modified duties, duties by the way that were different but not modified, he no longer will receive compensation for injuries sustained on the job. The modified duties assigned to Lionel actually increased his pain.

Somebody at the WCB who was not a therapist nor an ergonomist decided, without investigating, that Lionel chose not to do the work assigned as modified duties, when in fact he physically could not perform the function. Now he is about to lose his house because he cannot work due to his injuries. Lionel's injuries consist of back, shoulder and forearm problems, all of which were sustained in the workplace. Lionel accepted the daily, hourly, continuous pain as the way he was going to have to live for the rest of his life, not just his working life, but how is he to accept the pain of the loss of total income that he now must suffer?

To emphasize the disgusting attitude of the employer in Lionel's case, I would like to make the situation absolutely clear to you. For 29 years of Lionel's working life, he lived and worked in Germany. To receive the disability pension he deserves from the German pension plan that Lionel paid into for 29 years, he must have the Canadian — Ontario — employer sign a notification that Lionel is no longer physically able to work.

The employer in this situation said, "No, we're not going to sign this form as things stand, but if you resign we will gladly sign the document." This very specific blackmail attempt was done to get Lionel off the company books and to ensure that the company's WCB experience rating costs would not rise due to his workplace injuries.

Thanks to this employer, Lionel Walsh is to receive no money whatsoever until his 65th birthday. Lionel could not even meet the Ontario government workfare requirements, if he chose to.

I would like each and every one of you, the members of the committee, you, the ministers of our Ontario Parliament, to think about not being able to drive a car for more than 10 minutes without atrocious pain, think about not being able to keep physically fit after being a national champion, think about not being able to provide for your family after having been a productive member of the workforce for 45 proud years. And you think about loosening your home. Think about someone telling you you are not injured when you constantly feel the real, unimagined, excruciating pain. Think about having someone telling you that you cannot receive the benefits that you believe you rightfully should get.

Minister Witmer received a letter requesting help from Lionel Walsh. That letter was passed on to the very WCB person who had done nothing for Lionel throughout his ordeal. Think about actual, real and continual physical pain. Then think of the psychological pain that is now another ongoing result of WCB administrative practices or blunders. I invite any one of you, the committee members, to see either myself or Lionel after these hearings to understand and rectify this monstrous injustice.

The second situation I would like to speak to you about, although not so physically devastating, is even more of an administrative nightmare, or maybe just another blunder.

Ken Postill was a full-time employee of a major corporation, who followed the WCB rules and red tape as far as he could, but Ken Postill is still the loser. The accident that occurred was caused by Ken being assigned to a work area where a large, ungainly, 250-pound item was used that had to be moved. Ken was assigned alone, and being the committed employee that he was and knowing that the job could not be performed without the item being moved, he tried to move the item alone.

When the item was moved, Ken hurt his back seriously. The forms were filled out appropriately and the doctors were seen appropriately and Ken continued to receive his salary while recovering. The employer even admitted culpability, and you should be aware that the employer was a schedule 2 employer. Ongoing therapy was required including special massage and a back brace, all of which where paid for by the employer-paid supplemental health care plan until Ken retired.

The claim, for all that Ken knew, was accepted. How was he to know otherwise? You should know that Ken retired early because he was no longer able to perform his chosen profession. He was embarrassed knowing he could no longer do the job he had done for 20 years. Ken's personal pride in his ability to produce would not let him stay in the workforce with his co-workers while physically unable to perform to capacity. Don't forget that this injury was a workplace injury suffered directly because the employer wanted to save the salary of one employee for one hour.

The therapy is still required and a new back brace will soon be required, but Ken has to pay for this out of his reduced retirement pension benefits. Why? You might ask why, since the accident was reported correctly and the claim was accepted accordingly by WCB. It seems that because Ken Postill made no claims to the WCB for therapy or for back braces, the WCB decided, or maybe has a policy of closing files without consulting with the injured worker, in this case Ken. The employer supplementary health care plan had picked up the tab while Ken continued to work. If the WCB had called either the employer or Ken, they would have known that Ken's injury and therapy were continuous.

When Ken subsequently applied for compensation for his therapy payments he was denied. The WCB had decided this was a new and second claim without an accident. This was not the case. Ken had one accident at work that the employer admittedly was responsible for, and now Ken is not only paying with pain, but also must shoulder the heavy financial burden. Perhaps this additional weight does not cause any additional physical harm, but it certainly is having a major effect on his meagre retirement financial health.

The act now is not working for one of the partners of the initial act, that partner being the workers of the province of Ontario. We agree the act needed to be amended, changed, updated. This does not mean taking several steps back, several many, many steps back, for the workers you represent.

What would be expected is that the problems would be corrected. The changes needed should have simplified the system for the workers as well as employers, but instead the proposed changes are surreal. Although the two examples I've given you may be errors or administrative bungles, both of the situations would not be the exception under the proposed new law, but instead would be the normal method of employer operation.

Workers who labour to create, to manufacture, to package, to transport and to sell products that make the profit for employers will pay with their health, safety and pocketbooks for that privilege. Due to the blame the victim attitude that is encouraged by Bill 99, some Ontario workers will be maimed while others will die. Employers will of course be able to maintain low experience ratings, resulting in higher profits. Employers will not have to pay for the injuries, pain and deaths their workplace practices cause. The worker will pay.

The changes caused by the inclusion in law of Bill 99 will be negative to the workers of this region as well as the rest of Ontario. The changes will mean:

Industrial diseases of the 1990s will not be covered fully; stress and repetitive strain injuries, for example.

Industrial injuries of the 1980s will not be covered. Soft tissue injuries, as noted in the two cases I spoke of previously, are examples.

The reduction of the protection of unemployed workers with disabilities is by 75%. Who are the people hurt by this bit of magic? Only injured workers.



1450

Forcing injured workers into unacceptable operations or drug therapy: Only injured workers will feel this pain, and maybe forever.

The privatization of rehabilitation. Now profit will definitely be the real result of worker injuries.

Allowing only 50% of pensions for future injured workers: 90% of Ontario's workers have no access to company pension plans, so once again injured workers suffer.

The reduction of benefits from 90% to 85%: No one is fooled by this direct financial attack on the injured workers of Ontario.

The emplacement of arbitrary limits on chronic pain: When, suddenly, did the administrators develop an understanding of complete and continuing pain?

The elimination of independent appeals in conjunction with the elimination of worker representation on the appeals board: Now those vile injured workers will have no one to speak on their behalf.

Expecting injured workers to take jobs which are not available and then setting their benefit levels on that pretence that a job is available: This bit of smoke and mirrors once again is a direct attack on the wallets of injured workers.

Bill 99 is a vicious, mean-spirited attack on the workers of Ontario who have been injured while producing profit. Bill 99 is a corrupt and vulgar assault on the workers who will be injured while producing profit in the upcoming years.

By supporting Bill 99, you the members of the Parliament of Ontario, elected to pass laws that will be for the good of the people of Ontario, will be perverting that purpose. You will be looking out for the interests of corporations and not people, and certainly not working people. You, your children and your grandchildren as well will be hurt by this disgusting piece of legislation. The purpose is clear: Cut workers' benefits and reduce employer costs. Why? The \$1-billion surplus of the last three years is already abhorrent. The \$8 billion already in the savings account of the WCB is offensive. Again I ask, why? Enough should be enough.

I, on behalf of the working people in the region of Waterloo, implore the government, through the committee, to step back and revisit the devastating changes in the laws that are being replaced by Bill 99.

My children, my two little guys, are here. They're here because I wanted them to know that we spoke out against this bill that will decimate the WCB legislation we have in place. I don't want them to be able to say to me 10 years from now: "Where were you when the government of the day changed this legislation? Who decided that I would no longer be protected in my workplace, that getting insurance would be a hit-and-miss situation at the whim of my employer? Who made sure that making a profit at all cost was more important than my safety and protection?" I at least will be able to say to my children that I and many, many concerned people vehemently objected and spoke out against the new legislation.

I want to ask every one of you sitting on the committee, every one of the members of the Ontario Parliament here, whether you will be able to look at your children or grandchildren when they have been maimed in an industrial accident and say to them, "I was there, I heard and I still made the decision to ignore people's concerns with Bill 99 because corporations have to have greater profits."

You, the ministers of the people of Ontario, I suspect think that this will never happen to you or yours. I invite you to walk, if you can, in the shoes of Lionel Walsh or Ken Postill. Thank you for your attention.

**The Chair:** Thank you very much. We have two minutes remaining per caucus for questioning. We'll begin with the Liberal caucus.

**Mr Hoy:** Thank you very much for your presentation and the graphic stories of Mr Walsh and Mr Postill. I just want to make a comment. You mentioned that you wanted in the future to say you were here and spoke up against Bill 99. I applaud you and everyone else who has come before the committee in the past and present and will come in the future days ahead to speak up on the bill. I urge everyone, always, to speak up about the issues of the day.

Our party and the third party will no doubt be putting forward many amendments to this bill. During the noon-hour break I was talking with my colleagues about amendments put forth by the opposition. They are not intended to make the government look bad or put them in a tough situation. They're made to help the people who are affected by the various pieces of legislation that come forward. We were hard-pressed to remember any opposition members' or parties' amendments being passed by the government. But we'll continue to do that and we appreciate everyone's concerns as they relate to Bill 99. Thank you for being here.

**Mr Christopherson:** Thank you for your excellent presentation. I noted as you were presenting this, on page 8, the second-to-last bullet point: "The reduction of benefits from 90% to 85%. No one is fooled by this direct financial attack on the injured workers of Ontario."

Yet all we have to do is hearken back to a couple of hours ago when we had that stimulating presentation by the Ontario Hotel and Motel Association, which has now become one of my favourite presentations for unique reasons, wherein they say, "Bill 99 is about restoring fairness and equity into the workers' compensation system." Remember, your comment is the one I agree with. No one is fooled by this, yet we see what I would characterize as Orwellian doublespeak. They go on to say, "I suggest you will agree that changes are better, or should I say fairer, for both employees and employers."

They close their presentation by saying — get this — "The best way to ensure that injured workers have a system in place that will provide the assistance they need is to ensure the passage of Bill 99." What would you say to those individuals and those who would buy into those statements?

**Mr Rooke:** Brother Christopherson, I think there is also one other important issue missing here. Right now when an injured worker returns to his pre-injury job, he's

returned to work at compatible earnings. Under Bill 99 it says whenever it's possible to restore the worker's earnings. I think you also have to look at this: I work in the heavy metal industry, as Brother Cruikshank does, and we make about \$25 an hour as press operators. If we get injured there, is that to say if there's a modified job down the street, that we're also going to be expected to come back to work at \$7.50 an hour, where right now it's compatible?

I say to the hotel and restaurant presentation you're speaking to that they're wrong. It's injustice; it's not right. The people who work for this group went there to sustain a livelihood for their families, not to go be injured.

1500

**Mr Christopherson:** Did you see the reaction of some of the government backbenchers when you said how much you were making? God forbid working people should make a decent wage and have a decent standard of living in this province.

**Mr Maves:** Mr Hoy's comments are surprising. I believe that under the new legislation we just passed, some of the contents of your proposed bill were put into the government bill. I have been on bills where we have accepted opposition amendments.

I just wanted to say that RSI injuries are still covered under Bill 99 and I wanted to point out —

**Ms Carter:** Not fully.

**Mr Maves:** Any clinically proven RSI is still covered.

**Ms Carter:** Clinically proven.

**Mr Maves:** Right.

I want to talk to you about subsection 33(2). You have a statement here about forcing injured workers into unacceptable operations or drug therapy. That's come up in several cases. The subsection in question is 33(2), "The board may provide a special surgical operation or special medical treatment for a worker" and so on. There seems to be a lot of concern about that, but that is an existing provision. I just wondered, has that been abused in the past or is there something new about that that's causing fear? It is an existing provision. It's lifted right out of the existing act.

**Mr Cruikshank:** You have to understand companies. I work for a company that makes car frames and undercarriages. If you give thought to it, that's not what it makes; it's out to make money. It makes money on the rebates that workers' comp gives back. It makes money there. It makes money for me to go back injured rather than have lost time on the rebate system.

They talk about the premiums. I fell over an I-beam last Wednesday. I came out of that workplace at midnight. This arm is still not right. This arm didn't work and my knee didn't work. I called in the morning and I called in the afternoon. I couldn't get my clothes on. They told me: "We don't care. Bring your clothes. We'll put them on. We've got a job for you." I went to the doctor. The doctor said I've got no use of this hand, limited use of this hand, can't stand for long periods of time, and the pills I'm taking make me dizzy and actually make me go to sleep.

They still have a job for me. Do you know why? They don't want lost time. They want their rebates.

You talk about the unfunded liability. Stop these rebates. You've paid more out in rebates than you did injured workers. Is that fair? You don't hear one thing of that from these hotel groups. You don't hear that part. It's from the workers. They take it off the back of the workers. If a company gets the right to send me where it wants to send me, it'll send me to the doctor who is going to do what they want to do.

**Mr Maves:** You still have the right to go to your doctor and the board doctor. This section on health care is an old section. I just wondered if you are aware of that.

**Mr Cruikshank:** The problem is that they won't believe it, and if they have the right to send you to another doctor, they're going to send you to a doctor who — about injured workers, it's unbelievable in this province, in the 20th century, what's happening. I had a young girl who called me. She works in a place that was robbed. She was tied up. She asked, after she was untied, if she could go home. She phoned in the next day and said, "I don't really feel like coming in." Her employer said, "Fine, I'm not paying you because we have to pay somebody else to come in." So I said to her, "Why don't you complain to the Ministry of Labour?" She said: "My sister is going to college and she works there at the weekends. I'm scared that she may be laid off." Is that the Ontario we want in the 21st century? Is it? That's what they're going to get with Bill 99.

**The Chair:** Thank you very much then for your presentation this afternoon. It is appreciated.

#### KITCHENER-WATERLOO-CAMBRIDGE INJURED WORKERS GROUP

**The Chair:** I'd like to call representatives from the Kitchener-Waterloo-Cambridge Injured Workers Group, please. Good afternoon. We know this gentleman. You've appeared before the committee several times already.

**Mr Karl Crevar:** Yes, I have.

**Mr John Sweeney:** I've asked Karl to come up in case someone wants to ask a question. I have hearing problems.

**The Chair:** He'll help you if you have a hearing problem. That's perfectly fine.

**Mr Crevar:** That's why John asked me to be up here.

**Mr Sweeney:** Anyway, I can't hear.

**The Chair:** Would you introduce yourself, please.

**Mr Sweeney:** Yes, my name is John Sweeney. I'm president of the Kitchener-Waterloo-Cambridge Injured Workers Group and regional vice-chairman of the Ontario Network of Injured Workers Groups.

I would like to make one comment. I noticed there is no local MPP here today. You would think the local MPPs would be here to listen to presentations by injured workers, by employers, by the labour movement. I don't see any local MPPs I know of, maybe with the exception of the Chair. It's Guelph, I believe? Anyway, I think it's a disgrace.



I find it an absolute disgrace that the Tory MPPs on this committee can sit there and pretend to be interested in hearing the injured workers of this province along with labour, employers, academics and numerous other interested parties make presentations on the most regressive piece of proposed legislation ever about to be enacted irrespective of the outcome of these hearings.

This legislation takes us back to the year 1914-15, approximately 80 years ago, when Judge Meredith first introduced the Workmen's Compensation Board. Employers were not exactly happy with the new act at that time, and ironically they are still not happy in 1997 about Bill 99. In 1914-15 the employers saved millions of dollars, and likewise in 1997.

As government members of this committee, you must be so proud of the fact that you are part of a bill which will devastate the lives of injured workers across this province, many of whom are living in poverty and daily uncertainty. Their benefits will be reduced by 5%; their health care benefits will be all but eliminated; vocational rehabilitation will be drastically reduced; and chronic pain will come under extreme scrutiny.

Attempts to be rehired into the workplace are virtually gone. What else lies in store for workers who are injured in the workplace or contract some form of industrial disease? There is very little left for this government to take away from some of the most vulnerable segments of this society.

Bill 99 is an employers' bill. As usual, we are unhappy with it. There is absolutely nothing in this bill that will benefit workers or injured workers. It was created to serve a series of employer and government purposes, to eliminate the mythical unfunded liability which the Harris government created as a crisis in the province. It is also being used by Harris. He's quoted as saying it was a barrier to offshore investment. Yet he returned from Asia with multibillion-dollar contracts, so he says or so we hear, along with his dear friend Mr Klein, the Premier of Alberta. If the unfunded liability was indeed a barrier, why were these contracts secured?

Occupational stress: Claims for stress will almost be eliminated. Section 12(4) of the proposed act makes it virtually impossible for workers to be accepted under occupational stress, the exception being workers who suffer from "an acute reaction to a sudden and unexpected traumatic event." Will policemen and firemen be denied because they expect exactly these hazards every minute of their working day? These issues will be settled by board policy, which will be the appeals tribunal.

Will construction workers or miners be denied claims for occupational stress? They also face adversity every minute of their working lives. Westray Mine in Nova Scotia would be a typical example.

Any injured worker who has dealt with the Workers' Compensation Board will tell you that they face the same problems of stress simply by trying to deal with the everyday treatment they receive from adjudicators and other board staff. They are treated like scum. They are verbally abused and many times threatened. They are not treated

like human beings but as leeches, burdens on society and frauds. Occupational stress goes together with most accidents that occur in the workplace or any accident that occurs in the workplace.

#### 1510

This new bill does absolutely nothing that will benefit workers in regard to occupational stress and trauma attached to everyday activities in any workplace, including MPPs.

Medical determination: 200 nurses will be or have been hired by the board. To do what? To make medical decisions? To determine when an injured worker is fit to return to the work place? To diagnose the medical condition of the injured workers? With all due respect to the noble profession of nursing, these decisions are not theirs to make. We have excellent MDs, orthopaedic specialists, vascular surgeons, psychiatrists and many other experts in the field of medicine. I am confident that the medical professions are capable of making such decisions.

If the board medical staff, including nurses, make the decisions, then injured workers will not be receiving unbiased and negative diagnoses, simply because the opinions will be coming from staff who are employed by the board and are paid by the same. This will create a situation where the results must favour the board or the employers. If not, the medical staff will find themselves joining the ranks of the 1.5 million unemployed in Canada as we speak.

If you had to make a decision whether to do as your employer bids or face unemployment, what choice would you have? A prime example of this no-win situation is the members of this Tory government. You either do as you are told or else. Many backbenchers in the government are gagged. They cannot express the concerns of their constituents under fear of reprisal from Mr Harris and company.

Injured workers under the present Workers' Compensation Act have had major problems with medical decisions made by unqualified staff at the board, decisions that are made by adjudicators, case workers and at times junior staff members, not by the medical staff.

Labour market re-entry: Deeming, which we as injured workers have fought to have removed, unsuccessfully, has received another tool to use against the injured workers. Paragraph 43(3/2) of Bill 99 states that if a labour market re-entry plan has been fully implemented, then the board shall deem post-injury earnings to be those set out in the plan. Therefore, even if everyone involved recognizes that the plan has not been successful, earnings will be deemed, and loss-of-earnings payments will likely become nil payments. This provision will create the absurd incentive for injured workers to insist that plans aim low, as an ambitious but unsuccessful plan would have devastating consequences.

How can this new program possibly be effective when we have the highest rate of unemployment in Canada at the moment? We have recent graduate students who cannot find employment. We have a major shortage of skilled labour. Where do we find workers? From other countries,

as usual? I say no. Train injured workers to fill these positions. Create training programs that will give them the opportunity to return to their rightful place in society. Canada, unfortunately, has one of the worst records in the civilized world for failing to employ the disabled, which includes injured workers. It is a record that we all should be ashamed of. I have dealt with many injured workers who could be used to train others; for example, tradespeople, professional people, skilled people. Let's use them, not abuse them.

In Bill 99, subsection 33(3) states that if, in the opinion of the board, the health care benefits are costly, they — the board — may provide a special surgical operation for the injured worker. The object of this is to eliminate substantial payments under the insurance plan.

Imagine it, "If the injured worker refuses to have the surgical operation, we'll close their health care benefits." If a patient in the real world refuses an operation they are not penalized, yet this government sees fit to make decisions that, again, will have a devastating effect on the lives of injured workers.

This committee and this government must be made aware that Bill 99 is supposed to be about real people with real injuries. We have committed no crimes. We went to work one day and, in some cases through the negligence of greedy and selfish employers, were injured. Why is this government punishing us for our crimes? This committee should get it into their heads that injured workers are guilty until we prove innocence. Will Bill 99 eliminate these myths about injured workers?

This legislation is supposed to be about real people and real injuries. You are looking at an injured worker who on April 23, 1983, fell 280 feet from a cathedral ceiling. Two young apprentices who were working with me were killed. I hit a marble floor in the cathedral. You don't go anywhere when you hit a marble floor. Both hips came out at my shoulders, my eyes were up in my head, my ears were gone, my hair was gone, and every bone in my body was broken, shattered. It took the board two years to accept the claim, and today, in the last week, I'm still fighting with the board for the cost of 100 Tylenols a month, which amounts to \$12.. That's \$144 a year.

You now could be sitting here, and with all due respect, the majority of this committee don't give a hoot about me or any injured worker. You just don't care. The government doesn't care. What do you report back to the government you report back to? What do you tell them? What you heard in Kitchener, what you heard in Sudbury or wherever? The presenter before me gave you a typical example of an injured worker. Is Bill 99 going to eliminate these problems? No way.

You sit there in judgement. Call it what you like. You just make the decisions. My life was devastated, still is devastated, but I'm here. Some people say, "You're lucky you're alive." Am I? I think my life is worth more than a few lousy dollars, to be honest with you. Anyone's life is worth more than that. I know in my heart that the government doesn't care. They don't give two monkeys about me

or any worker who is maimed or killed on the job. The bottom line is money, money, money.

Why is the government using injured workers to eliminate the unfunded liability? The 5% reduction in benefits alone will save millions of dollars, yet Bill 99 will reduce employers' contributions by 5%. What purpose does this serve, really? Take it from the injured worker and give it to the employer?

1520

I presume the committee members are aware that the board paid out more in rebates to employers in 1996 than they actually paid out in workers' compensation benefits. It has been mentioned many times here this morning, and I'm sure in other places the same thing, that Dofasco in Hamilton gets about \$2 billion in total refunds for being good boys or girls.

What is the financial crisis at 200 Front Street in the ivory tower? How can Mr Glen Wright be allowed to spend \$70,000 on a new bathroom in a brand new-building that cost approximately \$270 million? So he could have a smoke in his little bathroom? I find it absolutely disgusting that this government and the Tory members of this committee have only allowed a very small percentage of actual injured workers to make presentations before you at these hearings. That could be corrected. In Toronto, when the hearings opened, there was one, a fireman; in Thunder Bay maybe five, six, I don't know; two in Sudbury; in total maybe about 13.

Injured workers are the major stakeholders in this whole system of employers and injured workers. People tend to forget that and think the major stakeholders are the employers. Sure, they foot the bill. That was the agreement in 1914-15 in exchange for fair and just compensation. Did we get that? No. Bill 99 fails to have anything in it that will improve conditions for the injured workers of this province. As I mentioned, this bill is about money and to increase profits for the board and employers; nothing else.

Fraud and \$10 million: I never thought I'd say this, but this could be one of the most positive sections of Bill 99 if it is implemented as a method of doing exactly what it calls for. In every system we have the users and abusers. The society we live in, that's the way things are. It's a major factor. We live in it and then we allowed it to erode rapidly. The WCB is no exception. My problem with this government's approach is that it seems to be to put more emphasis on the workers than all the other players in the system. I'm making reference here to the surveillance etc and this \$10 million.

Many new Canadians left their homeland to escape atrocities, including surveillance 24 hours a day. They come to a new life in Canada, beautiful country. I thought when I came here in 1960 — I think we had a Tory government — it was beautiful. What happened to the Conservatives? Is this a new breed of Conservative we have? I'm concerned about the new Canadians. God help them when they get injured, because if the board decides on surveillance, they'll do it.



The surveillance crew is welcome in my home any day or any night to see how my evening or how my day goes at home, how I try to get to sleep. Put the cameras on me hanging from the ceiling suspended until my arms drop off to get some relief. They're more than welcome. It's worth \$10 million to come into my house.

The abuse to the system among injured workers is in the region of 10%. Yet as I mentioned, all indications point to the injured workers as the major abusers. Is it not abuse if an employer fails to report an accident or incident? Is it considered — this is fact — abuse if an employer writes a personal cheque to a WCB staff member who happens to be a case worker for consultation fees for \$2,000? That staff member cashed the cheque and put it in her pocket. In the interim, the WCB laid charges against the employer, which is found guilty of fraud. The board fines the employer heavily. The board staff member still works at the board. I call her up every so often and say, "Hi, how are you?" and hang up.

**The Chair:** I have to ask you to sum up, please.

**Mr Crevar:** You're running out of time. Read it; they have to hear it.

**Mr Sweeney:** I have problems with the legality of Bill 99 with respect to the Constitution of Canada. Although I'm not a lawyer, I find it rather odd and presumptuous of this government — and dictatorial — that Bill 99 has not been enacted as law and yet I find that at Conestoga College in Kitchener there's a course being offered under the title of Coming to Terms with the Workers' Compensation Reform. This course starts on September 23.

My question is: Why in hell am I sitting here pleading for injured workers' causes when we all know full well that the government members of this committee have no interest in what any of us have to say or what we have to tolerate from the WCB and this dictatorship? I can assure this committee that injured workers across the province of Ontario will still have the energy and the determination to do whatever it takes to prevent this regressive piece of legislation from becoming law.

Injured workers have been persecuted, abused, and driven into poverty by governments in the past. We survived because we are strong and we are a body of workers who share the same hardships and pitfalls of both governments and the workers' compensation system. We are survivors. Thank you.

**The Chair:** On behalf of the members of the committee, we thank you for your very eloquent presentation this afternoon.

**Mr Crevar:** Just on a brief point, only on a brief point, I noticed Mr Maves got somewhat upset when I came up here. I don't know why —

**Mr Maves:** How did you notice that?

**Mr Crevar:** I did, Bart. Mr Sweeney had asked me to assist him up here. I can assure you that when injured workers ask for any assistance to present to this committee, I will be here.

**The Chair:** Very well. Thank you.

## BILL STUBBS

**The Chair:** I'd now like to call upon an injured worker. Mr Stubbs, please. Good afternoon, sir.

*Interruption.*

**Mr Bill Stubbs:** Good afternoon. Madam Chair, members of the committee and everyone else —

**The Chair:** Excuse me, you might want to just wait for a moment until it's a little quieter.

*Interruption.*

**The Chair:** Okay.

**Mr Stubbs:** I'd like to congratulate this government on attempting to try to straighten up the workers' comp mess. Other governments have had a crack at it. It's still a mess. Hopefully we'll get it right this time because the old story is, if you can't do it right the first time, you better have time to do it right some time. I think this is the thing I hear about the decisions in the board. We don't have time to do it right and then we're mad that it comes back again because it's going to take more time to do it right.

My name is Bill Stubbs. My background is that I had a work-related injury with permanent impairment. I tried to get out of this damn welfare trap by taking the George Brown workers' comp claims management course. Most of you will know that it was instigated at the initiation of Mr Wolfson and was killed in 1992-93 by Mr Di Santo.

During that program I was top in the class, top in the business division and won the Employers' Advocacy Council award for a social issue paper on workers' comp entitled Why Injured Workers Don't Go Back to Work. This is going to be part of that program, that paper. It's also going to be part of the paper I wanted to present to the NDP commission, which I didn't present.

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You would think that as a person taking courses for adjudication, doing well, I would get a job with the board. No way. I didn't get it. My friend who is a lawyer from Poland didn't get in. Sure, they gave him the test. He thinks in Polish. They gave him a time-limited test in English; guaranteed failure. They kept him out. Anyway, let's stop the negatives. I would like to do this from a policy perspective.

My experience: I have been an employer rep dealing with union injured workers. I've been a non-union injured worker rep. There is no difference between how those two groups are treated. They are both given a rough time. I have seen claims, cancer, abuse. Come in Monday morning, two minutes on a machine, "I've got strain." Yes, she got a strain from being thrown down the stairway. That was an approved claim. Cancer is an approved claim. A fellow being laid off is approved. The reason I'm here is to help make the system better and to market myself as a person knowledgeable in workers' compensation who would like to work. I have been unable to find a job anywhere, even in a one-year training program.

The purpose of the legislation — I'll deal with the first two parts: Promote health and safety in the workplace, prevent recurrence of workplace injury and disease, and

the return-to-work provisions. I will not go into the sections because other people have done that.

Let's talk about the prevention of accidents. We have three classes of accidents. The plain frauds: A husband throws a wife down the stairs. She can't work in the morning but she gets comp. Cancer, because the firm doesn't have LTD — short-term disability. They have weekly indemnity, 15 weeks. Workers' comp is better. A layoff is common.

**Mr Bisson:** Excuse me, cancer from what industry?

**Mr Stubbs:** Non-work-related breast cancer.

We have preventable accidents. These to me are many of the repetitive strains. We'll talk about them later. We have the true accidents that we can't do much about. They are basically an act of God. I'm not going to talk about them. There's not much anybody can do. But the thing is, what can we do about the others which are preventable?

From a policy perspective, workers trade health and safety for wages. They trade health and safety in their plant for wages when they bargain. The concept here is danger pay, and this predates the legislation. If you work in a dangerous industry, you need more money for risk. However, in this instance, when these workers get hurt, they are covered by workers' comp. What ends up happening is that danger pay is built into their wages and is therefore built into their benefits, therefore those wages would be higher than if that section was removed. This is an inherent problem. We'll get into this later.

Piecework and automatic approval: 100% is usually acceptable average worker productivity. If you're producing at 200%, 300%, you're going to get RSI, guaranteed, just as well as you're sitting here. Yet these people are allowed to work at this level to get, in effect, professional wages for labourer jobs, and this is a policy perspective, so they reap the benefits.

Joint health and safety committees, one of my real pet peeves: There's no bona fide occupational requirement for being a health and safety member. What's the standard when they come out? Is it garbage in, garbage out? These people should be responsible for saying: "Hey, Joe, you're working at 300%. That's too fast. You're going to an RSI." That's my opinion. But they don't.

Then we go into fraudulent accidents. Prior to layoffs, abuse in the home, cancer, holidays, and as Glen Wright says, they go to Dr Summeroff, the winter ones go to Dr Winteroff, these cloud the statistics. They're an accident and the board cannot identify the fraud from the non-fraud. If you're going to evaluate this legislation based on accident frequency which cannot be objectively evaluated, it ain't going to work.

What's the solution? I think it's responsibility and accountability. If you are a party to this problem, allowing a high level of production which gives an RSI, you should pay. I don't care how you do it; this is what I believe. If I'm a labourer and I want to earn professional wages and I do it by destroying my body, I did it willingly. I had the choice.

Fraudulent accidents: I think the unions are responsible for an actual investigation and honest representation. No lies, no half-truths; honesty.

Let's talk about repetitive strains. The big problem is culture which promotes dependence. We have an injury out there designed to provide services for the people who are here and myself. There is no incentive to get me off the system, because with the revolving door at the board I get denied and I come back in a couple of years. I provide work for case workers. Case workers need work. No evaluation on returning to work, just the number of denials, how many claims are open. By the way, Workers' Compensation Board staff handle the same number of claims as consultants, and consultants are all bad claims, so don't give me the garbage that they work hard.

Another thing is that you can't attach my workers' comp benefits. I'm treated differently. Isn't that nice?

**Mr Bisson:** Pardon me, you can't what?

**Mr Stubbs:** Attach, sue. Isn't that great? Then there are handouts: worker adviser, injured workers' groups, the Industrial Disease Standards Panel, health and safety organizations, the whole darn works. Injured workers talk about SIF going to injured workers. Why not the money from those groups? All the safety organization has to say is, "Come up to a standard," because if you don't do something, some smart lawyer is going to say: "Hey, Mr Worker wasn't properly trained. He caused the accident, your problem, because it's your duty to make sure that organization comes up to scratch." Let the industry organizations fund the safety organizations, then there will be accountability. There is none now. It's free. Look at the big offices they have.

Let's go back to the return to work. That's culture, the worker. The worker must be willing. This is where we get into the concept of reservation wage, the level of wage at which the worker doesn't care whether he goes back to work or stays on workers' comp benefits. There's been research done on this subject. In an attempt to bring benefits more in line with the reservation wage, the benefits level was dropped by 5%.

If we look at 30-some per cent of the Ontario workforce which is unionized, there is a little factor in there called union wage differential which increases their wage versus anybody else. They also have more bargaining power, so they're going to trade health and safety for wages, whether it be production or — "Well, Mr Company, we want more money." The company says, "I can't stand a strike, so I guess I won't put safety equipment on the machine this year." Then what happens? An accident. We knew it was going to happen. They bargained wages for safety and there was an accident. Then workers' comp comes along with big assessments, then they come along with penalties, then they come along with Workwell, you name it. Why? Because the company was dumb, and I agree, in paying extra wages. They should have used that money they would have paid in wages to provide their workers with a safe workplace.



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So what happens? In the end the company is less productive; lower net income. Financial people who manage the union's pension fund say: "Hey, this company is not doing very well. Let's pull their pension fund money out." No money for reinvestment, no money for safety, so they go down the tube. It's simple.

**Mr Bisson:** Thank God for the mutual fund manager.

**The Chair:** Please allow the presenter to continue.

**Mr Stubbs:** In other words, what happens here is that we have to do something to lower the wage-benefit level of high-wage workers, and I'm thinking of unions specifically and especially the construction trades, to a level which is comparable to other workers so it is fair.

Next we have the classification of workers who are willing but don't return to work. Their physical abilities are not there. That's a board problem. Their training was ineffective, like mine at George Brown College, because Mr Di Santo killed the program midstream. Had he killed it prior, yes, okay, I can buy that. I can't buy it in mid-stream, which means that I'm still unemployed.

**Mr Bisson:** What program was that?

**Mr Stubbs:** Workers' comp. claims management at five community colleges.

The next thing is their job, and in workers' comp lingo there's a thing called super seniority which injured workers have, which means they get preference on a job over a high-seniority one of, say, steward. "Well, this isn't fair." Just a minute. What can a company expect when they bring somebody like me on when, say, a health and safety person on staff screws up? That's simple. I'll put in a grievance, which has happened, and I tell Brenda Elliott, "Oh, that's wrong."

Are we near done?

**The Chair:** No, you're all right. You have three minutes left.

**Mr Stubbs:** So Brenda says, "Oh, well, I'm not going to do anything." I'm not employed. There was a grievance. I worked at a company. The union harassed me through the board, wrote letters, made a phone call every day. They didn't like what I was doing.

What did the board do about this grievance? Oh, I'm harassing the human resource manager. The board didn't say, "I'm going to take that to legal and see if it's a human rights issue," which it should have been as far as I'm concerned.

Organized labour: Organized labour basically has all the reps on the workers' side at the Workers' Compensation Board. Well, 60-some per cent of the workforce is non-union. "Who represents them?" "Nobody. You're right: Linda Jolley is head of policy." "Do you see a thing as a good policy, a bad policy, who pays, who benefits?" "No, we don't see that."

Now let's talk about accountability, and this is the thing I've heard before from everybody, and I believe the administrative fund which was killed under Bill 162 should come back. All overturns at hearings should be assigned to that fund so that when they do their value-for-money, they will have accurate, objective data.

Speedy justice humanely administered: If you're an employer rep, which I've been, it's going to cost you \$100 a day for every employee who's off. I'm waiting for a hearing. I figure it's going to take two years; \$100 a day, that's unacceptable. That's what employers pay.

Competency: Decisions by, say, ergonomists should stand up at hearings. They don't. There is no incentive on a board staff to be accountable. What should happen? Government — oh, I want to talk about the commitment for injured workers by the board. How many people, what percentage of board staff, are injured workers? Under 10 or over 10? Say over 10, put up your hand. I'm thinking of the committee. Do you think there's 10% board staff disabled? It's less than 0.1%. That's commitment to injured workers. We need affirmative action in government departments.

**Mr Bisson:** I'll give you that one. That's a good point.

**Mr Stubbs:** We need affirmative action, but who is going to do it? Did the NDP do it when they were in? No.

**Interjection:** Sure they did.

**Mr Bisson:** Remember the quotas?

**Mr Stubbs:** Yes. Okay, now I'd like to say that all parties must move barriers from employment. We must change the culture. I need a hand up. I know injured workers who need a hand up. I don't need a handout; I want a hand up. You people are in a position to do something. You're in a position to ensure that the board looks after all allegations of any other law: human rights, employment equity, one-stop shopping. There's harassment, the board should hear it and it should go through the system quickly. I heard of one board staff who told the workers' lawyer, while the lawyer said this was harassment, "You can't touch me." That's nuts. They've got to hear.

I would like to end this presentation so you can have questions. I want to work. I'm able, I'm willing and I'm competent. Won't you give me and others like me a chance? That's all I'm asking. Give the board accountability. Force them to have accountability in the legislation, not the regulations, because they'll screw it up.

**The Chair:** Thank you very much. There is time for questioning from just one caucus.

**Mr Maves:** You talked about so many different issues. At the very start of your presentation you said you received an award for a paper from the Employers' Advocacy Council.

**Mr Stubbs:** Right.

**Mr Maves:** What was that paper about?

**Mr Stubbs:** Why injured workers don't return to work.

**Mr Maves:** What year did you write that in?

**Mr Stubbs:** 1991, 1992.

**Mr Maves:** Could you submit a copy to the committee?

**Mr Stubbs:** I can.

**Mr Bisson:** I want to know what the award was.

**Mr Stubbs:** It was 500 bucks.

**Mr Bisson:** No, what was it? From whom? Who gave the award?

**Mr Stubbs:** Employers' Advocacy Council, Michael Cryne.

**The Chair:** Mr Bisson, please direct your answers to Mr Maves.

**Mr Maves:** So you could get us a copy of that?

**Mr Stubbs:** Yes.

**Mr Maves:** That would be appreciated. The only other thing I would ask you about is the second injury fund. Do you think that's been successful, that's a positive element for encouraging —

**Mr Stubbs:** It's a very positive element but it should be changed in two ways. If it's your own worker, the company's own worker, it should be a low level. If it's another company's worker, a new hire, it should be higher and it should also include bringing people like me with permanent disabilities on when you have to come into a modified work or training program. Employers understand dollars, and it's only their money coming back from an assessment, and it makes poor employers become good employers.

**The Chair:** Thank you very much, Mr Stubbs. We appreciate your coming before the committee today. Just so you know, colleagues, Mr Stubbs has a brief and the clerk will make sure it's distributed to all of us. Thank you again.

**Mr Bisson:** Mr Stubbs, they'll hire you as an adjudicator —

**The Chair:** Please, Mr Bisson. We'd now like to call upon representatives from the Waterloo, Wellington, Dufferin, Grey Building and Construction Trades Council.

**Mr Bisson:** On a point of order, Madam Chair: I overheard a comment from Mr Stewart on the other side that somehow I'm an embarrassment to my profession for having made —

**The Chair:** You're out of order. Come on, now.

**Mr Bisson:** Hold it. I am not out of order. The standing orders are quite clear, Madam Chair, that members will not impute motive against another member at any time. They're against the standing orders, and I would ask Mr Stewart to withdraw the comment. That is not in order, and I stand by my previous comments to the other member.

**The Chair:** Do you wish to respond?

**Mr Stewart:** No, I don't. We're here to listen to the people, not to fellow members of this panel.

**The Chair:** Okay, we'll move on, then. Mr Bisson?

**Mr Bisson:** So if I call him an idiot, that's fine?

**The Chair:** No, it isn't. We're here to listen to our presenters and we have guests who are willing —

**Mr Bisson:** Chair, I just want to know the parameters by which we operate. Can I call him a Fascist?

**The Chair:** No, that is not parliamentary.

**Mr Bisson:** Can I call him dictatorial?

**The Chair:** Mr Bisson, we have guests. You know what the rules are for parliamentary language.

**Mr Bisson:** That he's an embarrassment to the human race, is that acceptable?

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WATERLOO, WELLINGTON,  
DUFFERIN, GREY  
BUILDING AND CONSTRUCTION  
TRADES COUNCIL

**The Chair:** I ask my colleagues to pay attention to the presenters who are about to introduce themselves. Welcome, gentlemen.

**Mr Tom Oldham:** My name is Tom Oldham. I'm the business manager for the Waterloo, Wellington, Dufferin, Grey Building and Construction Trades Council. It's a council of trade unions made up of 14 affiliates which represents 7,500 unionized construction workers.

Construction is characterized by short-term employment, even at the best of times, heavy physical labour, temporary job sites and numerous small employers. Unfortunately, these key aspects which make construction unique have been virtually ignored by all past governments in terms of workers' compensation. It is our hope that these oversights of the past will not continue with the present provincial government.

There are a number of key aspects of Bill 99 which adversely affect the construction industry. I would like to highlight a few of them for you today.

**Determination of average earnings:** One of the greatest concerns facing injured workers in the construction industry is the issue surrounding the establishment of average earnings. Section 53 of Bill 99 has the potential to severely restrict fair compensation being paid to an injured construction worker. Given the cyclical nature of construction, it is our contention that the hourly wage rate be used when determining the average earnings for injured construction workers.

One problem with the wording of section 53(1) is that a construction worker could have many different employers during the course of a year. Even though a person may have had steady employment, if he or she were to become injured shortly after changing employers, the employer may make the case that the injured worker's average earnings should be based on what he or she earned with the current employer. Obviously this is not fair and the legislation should be rewritten to reflect this. This exact problem was evident in the prior act in section 40(1)(b).

You have been informed by my colleagues from the Provincial Building and Construction Trades Council of Ontario and the Northeastern Ontario Building Trades Council on how this section of Bill 99 will have serious consequences on the construction industry. We are in the just-in-time business of delivering highly skilled tradespeople on an at-need basis. If we can't attract sufficient numbers of good people to the trades, the economy of Ontario will suffer. This section of the act is a disincentive for people to enter the construction industry. We would ask the committee to seriously consider this section of Bill 99 during their deliberations. Any amendments must take into consideration the earning power of a highly skilled



tradesperson who is denied the opportunity to work because of an injury sustained in the workplace.

**Return to work:** Most construction workers are denied return-to-work rights as a result of the thresholds which have been placed on this principle. Bill 99 continues this unfair pattern of discrimination in sections 41(1) and 41(2). The construction industry is characterized by numerous small employers. The average construction company employs five to 10 people. As a result, very few construction employers meet the 20-employee threshold. Further, construction workers, as the nature of the industry dictates, are highly mobile and work for different employers in a year. Thus, most construction workers do not qualify for return to work. Both the Provincial Building and Construction Trades Council of Ontario and the Council of Ontario Construction Associations, COCA, representing employers, agree the thresholds should not apply to the construction industry. We would recommend that section 41(8) be amended to read:

"Employers engaged primarily in construction shall comply with such requirements as may be prescribed concerning the re-employment of workers who perform construction work. Subsections (1), (2) (4) to (7) do not apply with respect to those workers."

On a more positive note, Bill 99 does acknowledge the uniqueness of the construction industry in section 40(3). In discussions with COCA, the Provincial Building and Construction Trades Council of Ontario agreed that the Minister of Labour should form a committee with the chairperson from the Workers' Compensation Board to write the regulations required for this section of the act.

**Notice of accident:** Presently, workers can start a claim by one of three persons notifying the Workers' Compensation Board: the worker, the employer or the worker's doctor. Under Bill 99 a claim can only be started by the worker filing a specific form. This is bureaucracy at its worst. There are many unanswered questions:

Where does the worker get the form from? The most likely source is the employer. This would give the employer the opportunity to intimidate and coerce a worker into not filing a claim.

What languages would it be in?

What if the form is filled out incorrectly? Will it be accepted?

In terms of a worker filing a claim, we agree it should be as soon as possible. Currently the WCB act has provisions stating a claim must be filed within six months; however, these limits have rarely been enforced. Where our concern is paramount is when a worker must make a claim regarding occupational disease within six months of learning that he or she suffers from the disease. In many cases a construction worker may be diagnosed with a disease and only months or years later understands that the disease was due to the nature of the employment. We have also seen treating physicians misdiagnose a condition or fail to link the disease to the occupation.

Recent examples are white finger disease and carpal tunnel syndrome. While the symptoms for these conditions are similar and many construction workers suffer from

these illnesses, one is more commonly linked to repetitive use of hand tools, the other to vibratory tools. The problems arise when a physician knows little about occupational diseases, how to treat and prevent them, and, as such, a claim may not be submitted until months or years later when the cause of the disease is diagnosed.

The difficulty with the time limit is that it is possible that a restrictive interpretation could cause workers to be denied entitlement. Many workers, including construction workers, suffer from cumulative trauma disorders. Job factors which include use of awkward postures, excessive forces and highly repetitive motions can have adverse health outcomes such as muscle, tendon and joint disorders. A worker may choose to see a health practitioner for management of pain and discomfort, but no one ever explains the link work has on the condition until that worker must stop work or require some time off work for exploratory surgery and repair. The symptoms may be the precursor to the development of cumulative trauma disorders and this then leads to the lost-time injuries. In order to have a successful impact on accident prevention, physicians and specialists must be more adequately trained in recognizing the links between work and occupational diseases.

Thank you for allowing me to be here today. If there are any questions, I'll certainly try to answer them.

**The Chair:** Thank you very much. We have four minutes remaining for each caucus, and we'll begin with the NDP caucus.

**Mr Bisson:** I appreciate your explaining to this committee the problems of the time limitation of six months and what it means to injured workers in a lot of cases where you're dealing with issues such as industrial diseases. I think that's something that cannot be overstated to this committee. In all of the experience I've had in dealing with industrial diseases, and most of what I've done is around industrial diseases and the compensation field, before I came to the Legislature, is that more times than not the claim is not filed until way after the initial exposure to the injured worker.

I've seen cases where welders, for example, were asked to go in to cut metal inside some sort of a reagent tank, had some kind of a reaction at the time but the symptoms were minor at the beginning and you didn't really have the big problem with the person's health until two, three, four, sometimes eight or nine years down the road. If you put that time limitation on, it'll really restrict justice to benefits for a lot of injured workers. Again, carpal tunnel and white hand, I think, is a good explanation. I thank you for bringing that before us.

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The question I have is the one around the issue of how the benefits should be paid within the construction industry, and I just want to make sure I understood you here. You were suggesting that the benefit level be based on the average yearly wage of the worker. Is that what you're suggesting? I need an explanation.

**Mr Oldham:** I'd like Alex Lolua to explain that.

**Mr Alex Lolua:** What we'd like to see is it being based on their hourly wage rate. Part of the problem with construction —

**Mr Bisson:** In other words, what's in the union contract.

**Mr Lolua:** In our case, yes, but it doesn't necessarily happen. There are non-union construction workers that are paid on an hourly rate. What the legislation says is, for example, if you had a bad year, because we all know that construction is cyclical and it follows the economy, you may not have worked for six months, start employment, say, on a megaproject like the SkyDome where you'd be guaranteed, if you're an iron worker, say, a year and a half work. You get hurt your second week on the job. All of a sudden, if they use the annual earnings basis, your benefit is based on an annual salary of \$2,000 rather than extending your \$25 an hour to a 36-hour week for the year, and that makes a significant difference on your benefit level.

**Mr Bisson:** Okay, I got you. Thanks a lot.

**The Chair:** Mr Christopherson, do you have a question? No? Very well, to the government caucus.

**Mr Ouellette:** Thank you very much for your presentation. We've heard from a number of presenters some of the problems with physicians in occupation-related diseases, in connecting them to problems. Some of the things that have been stated is that there's been as little as four hours in training for them. How do you envision that we should be able to bring the physicians up in a manner that should be able to relate to these diseases effectively?

**Mr Lolua:** My present boss spent quite a bit of time with the Minister of Labour lobbying for OHCOW, Occupational Health Clinics for Ontario Workers. I know Mr Christopherson was rather strong on the lobby to maintain the funding for that. Part of the problem with a lot of these things is that your average family physician can't recognize the symptoms. Take my former boss, Joe Duffy, who went to his family doctor with a persistent cough. His doctor thought it was asthma and prescribed a puffer for him. The problem was it was congestive heart failure. Mr Duffy was an insulator and during his apprenticeship covering boilers with asbestos paste applied with the bare hand was the norm. Now Mr Duffy has asbestosis and other manifestations.

I think the government has to make the commitment to funding research in occupational health and safety, and a lot of that's got to be given towards occupational disease. You have to use professional associations to disseminate that information, however they do it, but there has to be a specialized group of people that can deal with these things and recognize occupational disease.

**Mr Ouellette:** You said specialized individuals. Do you mean doctors should be able to handle these cases? How would a doctor even know to recommend somebody to go to a specialized doctor if he doesn't believe that's the problem in the first place?

**Mr Lolua:** As we disseminate it, I guess we also have to disseminate education on diseases like asbestosis. I'm sure that the insulators do some awareness among the

unionized members, but whether that gets out on any other network — I don't think there is a formalized network that I know of to get that information out.

**Mr Maves:** Just on that, before I get to my question, earlier this year the WCB did establish a task force on research which has people from universities on it, the Institute for Work and Health, employer and labour stakeholders. The research in general will cover a broad spectrum of topics, including occupational disease, ergonomics, job design, and we're going to allocate an additional \$7 million per year to the existing \$5.5 million a year to this type of research, and that's already been made public. I just wanted to let you know about that.

Section 21, with regard to notification and the concern you have over occupational disease: The section does allow, as you have mentioned, six months in the case of an occupational disease or once you've found out about having an occupational disease. In your brief you're saying that while they might find out they have the disease, they might not understand that it's work-related, and if it's interpreted too restrictively, they would be in trouble.

How would you amend that section 21 to make sure that it's clear that the intention is that when a person finds out about an occupational disease, that's when the six-month time triggers? Have you got any idea how you would amend the wording in section 21 to do that?

**Mr Oldham:** I'm not so sure at this time. Obviously, we'd have to put some thought into this, but off the top of my head, I couldn't give you a wording for that.

**Mr Maves:** Okay, I thought maybe you had done that.

**Mr Lolua:** The reason I brought that up, Mr Maves, was like, for example, with my boss. He stopped working on the tools in about 1981 or 1982 and all this came on within the last two or three years.

**Mr Maves:** It's a good point and the intention of that clause is —

**Mr Lolua:** The sad part is —

**Mr Oldham:** He was forced into retirement.

**Mr Lolua:** — with asbestos, even the wives are involved. In the old days, they did all the laundry and those fibres —

*Interjection.*

**Mr Lolua:** But in Joe's case, we're talking a latency period of about 15 years.

**Mr Maves:** Lastly, with regard to where you get a form for an accident, I think there's the intention also, there's nothing in the bill that restricts you to getting a form from your employer. You can get it from your union. You can get it from the board itself. You could probably still get a form from a doctor. If you needed help filling it out, the doctor could do it. You just have to —

**Mr Lolua:** I don't think we're trying to trivialize where you get the form, but the one thing you have to remember with construction is that we're unique, and the problem we've always faced when dealing with all legislative matters, and it's not just one in particular and it's not this government in particular, is that everybody tends to have the service and the industrial model tattooed on their brain, like, you go to work, you go to the same place.



A three- or four-week job is a big job in construction, because the megaprojects are gone. You don't see the cranes around like you did when the SkyDome was being built and the trade centre. We go into places, do our stuff, hit the road, get back on the hiring hall list and look for the next job.

We're just trying to get you to appreciate that who can initiate a claim can be a real problem for construction because of the temporary work sites and the high mobility of the workforce.

**Mr Oldham:** I think one of the best examples I can give you on that is the Toyota plant. There were approximately 1,500 tradespeople working on that. If a plant came to a closure with 1,500 people working in it, it would be headlines in the newspaper. There are 1,500 construction workers now laid off, and nobody knows that. This is the nature of our industry. You could work on a project today in Kitchener, tomorrow you may be in Toronto, you could be in Sudbury. It's just the nature of the industry, the way things work.

**Mr Lolua:** Again, the point was just to get across that it's a highly mobile, temporary work site and that this form issue could create some problems.

**Mr Maves:** They should be available as many places as absolutely possible. Thank you.

**Mr Patten:** We have heard from your council on several occasions, and I want to tell you I think the issue of the hourly wages and the basis of assessment is absolutely the fair way to go, without question. So we will definitely see an amendment on that one.

The issue related to return of work: I want to let you know I agree and I think perhaps most members might agree, at least on this side, with your proposed amendment to that particular section and the acknowledgement of the number of companies that have workers under 20 employees. There's no question that that's an important issue.

I would like to support the request by Mr Maves, because it's not often you get a request by a government member asking you if you would consider drafting an amendment to the legislation. Frankly, that would have more teeth in it, and I think Mr Maves is sincere in his interest on this issue. If I might encourage you, please take a crack at that particular section and send it to the committee —

**Mr Oldham:** I could draft it tomorrow.

**Mr Patten:** — so we can all get a chance to look at it. It's the one related to the six-month limitation vis-à-vis the work-related identification. I think that six-month one is a concern, although it does say at the point at which someone has learned about having contracted a particular disease, at that particular point, so that in and of itself may be several years later, but then again of course is the issue Mr Maves raised, and that is the link to the workplace. Other than that I agree with much of what you've presented. I think my colleague may have a question.

**Mr Hoy:** We've had other concerns about the use of the two official languages, and the fact that other people may use some other tongue for filing forms and other business matters, not only in this bill but in other bills in

the past; and you point out a very serious point when you say if the form is filled out incorrectly, would it be accepted, and if it's not accepted, how do we deal with it after that. We're hearing a lot about time delays in the hearings, and certainly if a form is filled out incorrectly, one would want it sent back and maybe some prompting as to how to do it. You raise a very interesting question as to whether it would be accepted, citing some language barriers.

**The Chair:** Gentlemen, on behalf of the members of the committee we thank you for taking the time to come before us with your suggestions, and we'll look forward to your proposed amendment.

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#### UNITED STEELWORKERS OF AMERICA, SOUTH CENTRAL ONTARIO AREA COUNCIL

**The Chair:** I'd now like to call representatives, please, from the south-central Ontario area council of the United Steelworkers. Good afternoon and welcome.

**Mr Pat Monaghan:** I'm Pat Monaghan. I'm on the health and safety committee for District 6 for the Steelworkers. I'm also on the compensation board for the Steelworkers and I'm president of my union, Courtice Steel, here in Cambridge, which is a mini-mill.

First of all, I'm proud to be a Steelworker and union member, not like the gentleman previous to me there who was speaking against the unions. Maybe he doesn't realize that if it wasn't for a union, some of the non-union places wouldn't have the legislation that's in place right now.

I'm also a personal friend of Homer Seguin, who used to be on the ODP. I'm also a friend of Rick Hamilton, who set precedent legislation as far as WCB cases go. They were also union people too.

To get on, I'm just going to go through my brief because 20 minutes is not enough to talk on this. I could probably for talk 20 years, since it's been in effect for 80 years.

I'd just like to point out that the solution of coming up with WCB was Tory-connected, through Meredith in 1914, as everybody probably knows. It's been in for 80 years, and the general rules of workers' compensation that have been applied by the government of Ontario have yet to be changed. It's stood decades of Conservative rule in the province and it's sad to see what's happening right now.

In my submission I wanted to touch on a few things. I want to talk about occupational disease, accommodation/return to work, the end of vocational rehabilitation, privatization of services, the narrow time window for appeals and the changed confidentiality obligation for employers. But I'm not going to have time to talk on that, so I'm going to talk on a few different things as I get into it.

One of the central themes of the presentation is one continuing message. It's simple and to the point: If those who benefit and profit most from the work being per-

formed by workers do not pay the costs for the injury and illness inflicted on those workers, then it will diminish their reason for doing something to prevent the damage to those workers who work in that workplace. Only when we treat injured and ill workers as human beings can we address the objectives that are set.

As indignant as it may sound, this is not just about morality; It's about prevention as well. Our history in places like smelters in Sudbury, the gold fields in Porcupine, coke ovens in Hamilton, steel mills in Sault Ste Marie, steel mills right here in Cambridge where we had people, prior to being unionized, who had lead poisoning — it was only through the union and the education the union gave our members that we discovered we had workers who had lead poisoning. Our employer had no sense, no obligation to tell the workers. It was through the union we got that.

We had hoped that the compensation system would move forward to prevent such hardships for workers. Instead, it's moving backwards. We're going backwards in time, not forward. I believe the proposed legislation takes us back in time to the last decades of the last century, when injured workers were simply discarded cogs. The history of Ontario and the tradition of most governments, and I say most governments in this province, is to move forward and not backwards. Bill 99 is bringing us backwards to the bad old days before the Workers' Compensation Act was created and enforced. Ironically, this current government has forgotten that many features of one system were originally set by Tory governments.

What I'd like to do is talk about the confidentiality. I can't imagine that this aspect of compensation regulations could possibly be in question. Doctor-patient confidentiality: It's one of the oldest things that people rely on, their statements. It's as old as medicine itself. Where there is no trust, there can't be any healing.

People aren't going to tell their doctors if they know that the doctor is going to blow the whistle on them, and yet, under Bill 99, employers are required to keep information confidential only if it is obtained from the board's records. Should employers however receive information from other sources, the confidentiality obligation does not apply. It is not unusual for some information to be provided directly to employers through outside reports; for example, a functional abilities report from a doctor. Under the proposed legislation, employers may also receive other outsourced reports that have nothing to do with the injury.

It is entirely unthinkable and unacceptable that an employer should be able to pass any such information on to anyone but the injured worker. We can only begin to think of how such information could easily be misused or abused. Knowing this possibility, an injured worker may refuse to participate in such an investigation outside of the board. Of course, he'd be cut off because it would be non-cooperation. But he's giving his whole medical evidence from the day he was born.

This union sincerely hopes this proposed legislation is merely an oversight and not another ploy by the government to invent ways to disentitle injured workers.

I'd like to talk on time limits of the appeals too. The union that I belong to, the Steelworkers, understands that any large institution must conduct its business under time constraints. You have to be economical, there's no doubt. We also find it difficult to investigate a grievance if it is filed many months after the act. But we also know that there are many reasons why an injured worker may file a claim long after an accident occurs. In the case of occupational disease, when does the clock start ticking for the time limit of that appeal? At first exposure, which is absurd because of the latency periods, or when the worker is unable to work, or perhaps when the worker dies?

The proposed legislation suggests two different time limits to file a written notice of objection to the board decision. If the issue is return to work or labour market re-entry, an appeal must happen within 30 days. All other decisions have a time limit of six months. For appeals to the appeals tribunal, the time frame is now six months as well, and the WCAT must make a decision within 120 days.

Given what the Steelworkers union has experienced in the appeals arena, we must assume these regulations are intended to discredit union compensation representatives who, already overworked, will probably be forced to pick and choose among the cases on the desks in front of them. Who will decide which appeals are feasible within the limited time? Who will train and pay the dozens of extra compensation reps required to meet such time demands, or should the union think about initiating an appeals lottery and we'll see who the lucky guys are that we'll represent?

We also know that in many cases the long-term effects of an accident may go unnoticed for years. Medical practitioners do not always connect work with health complaints. In respect to occupational disease, we know that some do not manifest themselves until years after the worker has retired. Even in the case of an injury, the worker is often unable for months to make any decisions. Pain, medication, treatment, worry and uncertainty all contribute to a state of inertia. How many of our members, how many non-union workers, will miss these deadlines and be forced to live with incorrect and unfair board decisions?

Further concerns which we have are related to claims of more than one issue. How will these be affected by appeal time limits? Bill 99 also requires that any notice of objection be filed with the board in writing, indicating why the decision is incorrect or why it should be changed. This will require compensation representatives to carry out extensive research before an appeal can even be filed.

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How will this condition affect those injured workers with limited reading and writing skills? In my workplace right now, in the Cambridge area here, it's Italian, it's Portuguese. We've got Canadian people, we've got Americans. I know right now how the employer intimidates the worker because he can't speak English: "Sign here." They know how to sign their name, but they don't know how to read or write properly. This is going to be another intimidating factor.



Are workers who speak very little or no English excluded from the appeal process? That's what's going to happen, because they're not going to know what's happening. This cannot be the intent of the compensation system, to be accessible only to English-speaking, unionized workers with a thorough knowledge of the law. We cannot interpret this any other way but as an act of intentional exclusion. As a union, we cannot accept such unfairness and such injustice.

Talking about privatization, which I think the people before were talking about, the very name suggests the new emphasis on the private sector. The Workplace Safety and Insurance Act eliminates two important words "workers" and "compensation." It's sad. It's really sad. Focus is clearly changed to the workplace instead of the injured worker for whom the system was originally designed. The use of the word "insurance" in Ontario has to suggest private sector activity. It means private companies whose goal is not to pay out for an injury, as opposed to the goal of compensation which is to ensure income replacement.

You've probably heard this before, because I know there have been other Steelworkers report on your little jaunt around the province, but in case it wasn't, back on June 6, I think, there was an article where the Workers' Compensation Board had a tender number 97-019, which invited proposals from private investigation firms, "to provide surveillance services to the WCB to detect and combat fraudulent activities." They have little or no knowledge of medicine, they know nothing about injury, recovery, ergonomics. Many injuries which our members suffer are not immediately visible, and they are not any less painful or debilitating.

We certainly hope the fraudulent activities which the board wishes to detect and combat are on the employer side, although it is unlikely the private investigators or security guards will be looking into so-called white collar crime; for example, unpaid premiums, falsified accident reports, worker harassment, substandard working conditions, just to name a few of the sins we have experienced by employers, and my own employer itself. We do recall that Ontario once employed such surveillance people. Do you know what they were called? Ministry of Labour people. They're no longer there any more.

Will the board train these private investigators to use their video surveillance? Will they peer into injured workers' private homes? Will they snoop into their neighbours' or into other families' business? How much is this surveillance going to cost the government compared to the number of fraudulent workers who are uncovered? We welcome any statistics from the board on how much worker-side fraud has been investigated and uncovered and what the cost has been of that.

If employers are entitled to do their own internal responsibility system, we expect nothing less for the injured workers, either.

I'd like to talk on occupational disease a little bit, because Homer was a pretty good friend of mine. I hope you realize in your statistics that the Occupational Disease Panel discovered more work-related injuries than the

compensation board did in its entire history while it was there, but now it's been totally dismantled.

One of our major concerns we would like to emphasize here is the compensation of victims of occupational disease. As a union, we are all too familiar with the devastation that disease can cause in communities. Our union needs to remind you of how employers withhold information from their employees, or how workers are humiliated by the compensation system, of why we continue to struggle with issues that should have long ago been resolved.

More and more, the compensation systems are faced with injuries which are not a result of trauma. Occupational diseases result from a constant, unrelenting assault on a worker. It can be years before the outcome is visible. In the case of cancers, a so-called latency period can be decades. This means that the time from first exposure to physical evidence of the disease or condition can be as long as 20 or 30 years. Sometimes the resulting condition is not as dramatic as cancer, in the case of soft-tissue damage. This can take the form of a back injury resulting from chronic overuse, or it could be repetitive strain injury, the result of doing a job in the same way hundreds of times a day.

The problem for the injured worker remains the presumption of proof. A worker must prove that a disease is the result of work, is an outcome of long-term exposure, overuse or short-term overexposure. As a union, I find many instances of occupational disease to be self-evident. In fact, I'd suggest there is hardly an illness that is not work-related, and yet in case after case the injured worker, in addition to the condition itself, in addition to financial burden, in addition to job loss, must carefully build a case to prove, and I quote "prove," the disease results from work. Historically, this type of information is not gathered or it is destroyed after a certain number of years before workers need it to prove their case.

The proposed changes will make this process particularly vicious. Certain diseases related to work, for example, in schedules 3 and 4, will no longer be presumed to have occurred due to the nature of employment, but and I quote again, "conclusively deemed" instead, unless the contrary is shown.

This seems like a minor change in wording, but giving our history with the scheduling of disease obviously related to the mining industry, this new legislation will create loopholes for employers. "Conclusive," in epidemiological-medical terms, is a rare finding. No diseased person lived a second life to verify the cause of the disease. In fact, the same exposure may not have the same effect every time, but our understanding of epidemiology is so rudimentary that this may be grounds for leaving the worker without assistance.

Assumptions are based on large population studies and we can only conclude our members are part of that group and may assume their work caused their disease. Employers will always be able to find an expert who is not conclusively convinced that a disease is the direct result of a particular work situation. In fact, our union can pretty well much predict who these experts are going to be.

Further, changes to section 92 concern us deeply. There is no longer a provision for the fixing of benefits according to the occupation in which the workers were disabled if they are working in another occupation.

With the closing of the Occupational Disease Panel, how shall our members be able to prove the connection between the work and disease? Our union doesn't have a medical disease research department, nor could we afford one. Many of our members are not graduates of universities with a degree in epidemiology or medical science. Few family doctors are trained to recognize occupational disease conclusively. They only spend four hours in their whole five-year intern on that. Many of our members live in locations far from specialized occupational health clinics. We will see once again our members languishing in sanatoriums, far from family and friends, and their families will be impoverished.

The ODP was an independent body that was funded by the board to facilitate research into occupational diseases and their probable causes. The ODP had the ability to find experts around the world. The ODP had the ability to consult with stakeholders: workers, employers, scientists, physicians, unions, communities. The findings, reviewed in the scientific community thoroughly, were shared equally with all interested parties. Why is the government afraid of such findings? Is there a relation between work and disease? Why would it not be in the interest of all citizens to have this information? Is it less costly to pay for poor families, for mental suffering, for broken communities, for premature death? Whose cost analysis is this, anyway? Not one for the affected workers and their families.

If the functions of the ODP are returned to the board, we have to ask if our members can be assured that the findings and the research will be independent of the board policy and interference. What assurances will our members have that the experts doing the work are uninfluenced by the board? How could our members be certain that the investigative results will be released publicly if they contradict board policy?

Finally, we are very concerned about the bill's intention to eliminate work-related stress and many soft-tissue injuries from compensable disease. Research in most industrialized countries in the world indicates that speed-up, new technology and productivity demands are responsible for stress. This stress is measurable: high blood pressure, ulcers, cardiac disease and other conditions. These illnesses are not imagined by stressed-out workers; they are real, they are measurable and they can be deadly. To not recognize work-related stress is to assume a pace and quality of life in the workplace which simply no longer exists.

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The same workplace conditions can lead to a range of soft-tissue injuries. These often lead to disability and chronic pain. Bill 99 intends to impose limits of compensation for chronic pain as though it were a disease like measles that could be cured easily and in an expected period of time. Such intentions fly in the face of all medi-

cal research and opinion. This is compensation by bottom line, not by good medicine. This too is a return to the standards of the past, but in those years very little was known about conditions such as work-related stress and soft-tissue injury. What excuse will the board have for not recognizing these now?

Soft-tissue injury and stress are a reflection of the way work has changed. We have a far better understanding today of why people get injured. Our understanding of occupational disease and the science that goes with it, while still inadequate and based on highly dated and suspect concepts of causation, tells us that it is far more widespread than was originally believed. Today people develop diseases and illnesses for a variety of reasons, but a fundamental one is the nature of their work and the environment in which they live and breathe.

The struggle for compensation will continue because each time injured workers and their representatives bring in sufficient proof of the connection between work and disease, the bar of presumption is raised a little higher. Such bars usually consist of assumptions about disease and illness: the worker's lifestyle and bad habits, the worker's genetic disposition, the worker's previous employment history, the worker's diet. Nobody mentions the fact that workers are doubly exposed: once at work and again within their contaminated communities.

**The Chair:** I wonder if I could just ask you to sum up in the next minute or so, please.

**Mr Monaghan:** Okay. I'll just go right to my conclusion.

A compensation agency fully and truly concerned with fiscal responsibility would turn to the activities known to reduce the gravity and number of accidents and disease. This would be enforced health and safety legislation, significant fines to employers who display a blatant disregard for the health and safety of their employees, worker inspectors and an emphasis on true joint health and safety committees in every workplace. In a broader sense, fair and just compensation for injured workers is fiscally responsible because any other treatment just becomes fiscally irresponsible for the broader community.

The changes proposed in Bill 99 mention none of these, although the government states that the purpose of this legislation is to encourage prevention. Until there are true and sincere efforts at accident and disease prevention, the rate of compensation-worthy events will continue to rise. This does not go away by refusing to compensate.

The Steelworkers union is proud of its decades of assistance and representation to injured workers. We have learned much about compensation, what works and what doesn't. We can say with certainty that Bill 99 won't work.

To say the government's proposed legislation is a step backwards is an understatement. It is a leap back into history, back to ignoring the pain and injury working people suffered under unsafe and unhealthy conditions.

**The Chair:** Thank you very much for your presentation this afternoon. It's appreciated by the committee.



## STRATFORD AND DISTRICT LABOUR COUNCIL

**The Chair:** I'd like to now call representatives from the Stratford and District Labour Council. Good afternoon. If you'd please introduce yourself for the Hansard record.

**Ms Bonnie Henderson:** My name is Bonnie Henderson. I am standing in for Chris Creason, who wasn't able to come. I'm a trustee for the labour council, so they asked me if I would like to come and say anything at the committee hearings. I thought about it and decided, even though I've never done anything like this before, that the issue was much too important to workers and myself to not come and express my point of view. I would like to thank you for allowing me this opportunity.

I work in a factory in Stratford. We make weather stripping for cars. There are a lot of repetitive jobs in my factory, and since I'm on the safety committee and the modified work committee, I witness and hear a lot about injuries on the job. My company is a pretty good company compared to some of the horror stories I've heard when I meet other injured workers or talk to other people in my town. My company has a corporate health and safety department, and they are committed to reducing the accident level so they can meet their 6 sigma by the year 2000. They have committees in place to accommodate injured workers, but even so, it doesn't always work without the help of the case worker. We get some action on getting the changes in place when they come out to check on what's happening to the worker or to see about getting someone back to work.

One worker I'm helping has a permanent injury from being left too long on the same job. Even though no one is to work more than four hours a day at that job, he was left for weeks on that job. He has had surgery which unfortunately has left him worse off. His doctor writes and says, "Try rehabilitation, as surgery didn't go as anticipated." How can he be rehabilitated? He has already been assessed by the clinics and he is at maximum recovery. He will have to work in pain the rest of his life. He has only been able to work four hours a day for months now and is in constant pain.

The case worker has been out many times waiting for the changes to be put in place that the committee recommended so we can accommodate him, and still they aren't all done. It is so frustrating. He wants to work and tries so very hard not to cry or complain about the pain, but it's in his eyes and in his voice. The case worker was concerned because the adjudicator needs to close the claim as his time is long ago up, and the poor worker is still waiting for changes to be done to his workstation. He works in conditions that are making his injury worse. How is he ever going to be able to work eight hours again? By the way, this is one of the lightest duty jobs in our workplace, but ergonomically it is not very good.

The changes will cost approximately anywhere from \$200 to \$500. They just involve positioning a box lower, adjusting the workstation, which involves moving two

screws, moving an air line, moving the palm buttons or replacing them with lighter touch ones, and getting him an ergonomic chair.

The union has accommodated him into this job and we wait for the changes. When the case worker came out last time and I reported that the case worker is extremely displeased, we got 80% of the job done within three days. I find each time the case worker comes out, we get more done for each case. It's the committee's feeling that the company is willing to do most of the changes but want to wait until they absolutely have to. I probably should also add that maybe they don't believe the committee knows exactly what they're talking about and they want to have this person who comes out who knows more and, "Okay, now we'll do it."

Under Bill 99, the case worker will no longer come out until all avenues are exhausted. This is not fair. The injured worker is the one that will suffer. At least in the above scenario, I see action sooner, but under Bill 99 we wouldn't even be at the first stage yet. The case worker makes our job easier in pushing the company to make the changes. Most companies don't have trained personnel or the time to allow engineers to help you.

Another worker in my workplace works four hours a day cleaning the workplace as he hobbles from job to job. Sorry; I get emotional about this man. He only gets four hours' pay a day from the company, as his claim has been denied from compensation after a year's time. He fell at work and there was no problem with the claim until his injury went on too long. The man should have been pensioned off. Everybody in the workplace, even the plant manager, can't understand why he has to be there. The longer he works, the more injury he does to his body.

There is no need for this dedicated worker of 35 years to struggle to work just to make a bit of money. He deserves to be home. There, hopefully, his body will slow down on the degenerative injuries and he will have a longer life at the stage he is at now. There is no hope for recovery. He hobbles and limps around with a cane, but still struggles to clean and come to work. This worker has overcome a hard struggle, as he was once a lead hand man, in charge of a department of 17 people, and he felt worthless and degraded to come to the workplace and clean tables and eyewash stations. It took a lot of patience to try and help him overcome this major adjustment in his life. He is hopeful that one day he will return to his pre-injury job. I know better, but I don't discourage the man. He suffers from lack of esteem that he no longer can give his family the monetary support that he could in the past and constantly worries about what the future will bring.

His doctor doesn't understand how the compensation board has made this man go back to work. After all, he is his doctor. The worker pushes himself to work because if he's off, he receives no money. So far, the company has been good about the four hours that he is at the plant, as he can only work about one and a half hours in that time. I'm probably exaggerating a bit of that, but he rests the rest of the time.

Bill 99 will make this even worse. The worker doesn't understand how the company — the company's consultant appealed the case, as he was due for NEL — or the compensation board is doing this to him. He did his job and worked hard for many long years. He doesn't understand: "Why aren't they taking care of me now that I fell at work?" How do I answer him? The adjudicator has to make the decision. We've heard nothing since February, even though he's been cut off since last October.

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My company, at the last modified meeting, was talking about how they could pay for people until they could decide if it was a workplace injury or not or if the person was capable of increasing their hours. I said: "How can we know this? We aren't doctors, so how can we know if they're ready to work or not?" No one could answer me. This worries me.

We had a worker who had constant pain in his shoulder. They put him on a trimming job for eight hours. I expressed my concern that the trimming would be irritating his shoulder. They felt it wouldn't and were very angry at the worker for not putting out more production. The case worker had the ergonomist come out, and the report said this type of movement would indeed increase his pain and that as long as he continued as he was, fewer production pieces, his pain should remain the same and not increase. The company decided they couldn't accommodate him and released him the next day. He now is going for retraining and hopefully will find employment, with his injury, somewhere else. I have my doubts about that. Hopefully, it works.

My sister has been injured at work. It took over a year for her to finally be diagnosed, and she works in the kitchen of a hospital. So how would another workplace know? This is a very scary situation. Please reconsider the changes to Bill 99. I suggest that you go to the workplaces, talk to the committees, look at the reports, and then go and see the action or lack of action in some of the workplaces. These are real issues and are happening to human beings. If you don't help them, who will? You have the power to make good changes and help these injured workers.

My company was fined for not following the law. I asked, why can't the fine be put back into the workplace, with the health and safety committee using the funds for making positive safety changes and educating the people about safety? I was told this is not possible.

I don't believe in systems that give companies back rebates and then there is no follow-through to see if they used it for safety changes. At least this would be a step in the right direction.

Our company gives us a free coffee if we can go a month with no lost-time injury. Then the next month you get a coffee and a doughnut, and then the next month a cold lunch, and then the next month a hot meal. I have never understood this. To me, it says we are causing the accidents. I would rather buy them a coffee for keeping us safe for a month. We can't get a month in, not yet, but maybe with this 6 Sigma the company is striving for, a

miracle's going to happen. Besides, that money could go towards fixing machinery and making my workplace safer, not buying coffee or jackets.

In closing, I want you to understand that I'm only giving you a few examples, as I only have 10 minutes, but there is so much more I could tell you. And please bear in mind that I believe I'm working at an above-average safe company in my home town, and I honestly believe that. This makes me wonder about the other companies that don't seem to care at all. This may sound weird, but it's how I feel. I feel sick with worry about what the new changes are going to do to injured workers and their families.

My fellow Brothers and Sisters don't understand how the compensation system works until they're in it, and then they constantly say to me: "I've always heard how easy it is to get compensation. How come I'm having trouble?" I feel this speaks volumes about the kinds of changes we need to make things easier for workers, not harder. It is hard enough to get the workers to tell their supervisors about cuts, sprains etc, as they don't want to hurt the company or bother them. They would rather deal with it themselves, and that's a problem. If injuries aren't taken care of in the early stages, the person usually ends up off work or working in pain. There is no way the average worker would actually initiate a claim. They would be horrified.

Bill 99 will be changing this. What will happen then? The sick and accident insurance will be used more and/or the welfare system when the sick and accident runs out. Sick and accident insurance only lasts for so long and then the benefits run out, and then what? Please think long and hard and do lots more research. Please don't bring Bill 99 into law in its current form.

I just want to add one more thing. I've heard a lot of speakers speaking today, and I just thought, since I teach safety in my workplace — I heard from the trucking firms and different ones today. A lot of them seem to think they're teaching safety.

I teach WHMIS. It's been the law since 1988. When I'm teaching WHMIS, I introduce myself and I get them to introduce themselves, and I ask them, "So what experience have you had in WHMIS?" It scares me to this day that a lot of them have only had an hour or something. I've had some of these workers tell me: "I just work with tar. I'm just in a construction firm. No big deal. I work with pitch and stuff." Other people say: "I work for a propane company, but they told me I didn't have to worry about it. We had an hour's training." These are serious things to worry about. I teach them an eight-hour course and they are shocked to find out how much they've been deceived because they realize they should have known all that.

I've heard them talk about this three-day waiting period. I'm really confused. With our sick and accident, we have to wait three days if it's sick and accident, but if it's an accident, it's right away. To me, an accident is an accident. I don't understand where this three-day thing is coming from.



I blame a lot of this on lack of knowledge and understanding of safety rules. I can give you an example of how I've been off sick in my plant. The xylene levels were very high in my workplace. I was called to help out. It's always, "Bonnie, come over here and help us," because I go and help out. I was surprised to find out that the workers had their masks on but didn't know they were supposed to do positive-negative pressure tests. You have to do it every time you put a mask on, for anybody who doesn't know that, and it's a very simple test. I asked the supervisor to train them, and he said: "You'd better do it. I have no idea how to do it." Think about that. He's supposed to be the competent person taking care of us. I went into the pay manager to voice my concerns about it.

I went ahead and did what he said, and I discovered that several of the workers' masks didn't even fit them when they went to do their test. I went in to get them some masks and found out we only carried medium in the plant, which shocked me. I assumed we carried all the sizes. I did my training and had always been told that people have these. We've got them ordered now in small, medium and large. There are different sizes. All we had was medium. This is just lack of training.

They have these nice health and safety corporate committees and everything, but if you don't actually go out there and talk to them, how are you going to do anything about it? It's a false illusion out there that you only report WCB if you go to the doctor. I have a lot of times helped fill out accident reports, but they always say to me, "Are they going to the doctor?" I always understood all that had to be reported.

I think now what's happening is because they get all these rebates back, it's not being reported that way. It's only being documented if they're going to go to the doctor. I'll get a call at home saying: "Can you come in? Somebody went to the doctor and we've only got so much time to get it or we're going to get hit with a penalty." I always come right in and help get it out there, but that's a real problem.

I would like to thank you for listening to me.

**The Chair:** Thank you very much. We have time for brief questions and answers from each of the caucuses. We'll begin with the government caucus.

**Mr Stewart:** Thank you for an excellent presentation. You made the comment, I think on the first page, that "my company has a corporate health and safety department and they are committed to reducing the accident level." As you go on, it tends to appear that maybe they're not quite as committed as you had said at the start. What about the success rate? We've heard some pretty good success stories — one happened to be up in the north country last week — of the rehabilitation, back-to-work process. What kind of success rate have you people had in your company through prevention and safety etc?

**Ms Henderson:** I don't want to blow my own horn, but I feel if it wasn't for me doing it in my workplace, it would have been really lousy. I was very fortunate. I went away and took some courses on it, so I was able to get them back.

**Mr Stewart:** The company is cooperating, though, with you?

**Ms Henderson:** It cooperates with me. I've always been a cooperative person with them, though. I go in and talk with them, but there are lots of times I'm very angry because I think: "I didn't even know that person was on modified work. What happened? How did they get back here? How do we make sure they're working on something that's ergonomically right for them?"

I went out the other day and here's a man working like this and he's saying to me, "This really hurts." I said, "Lower your chair." He lowered his chair down here and it's working; this level is good. An hour later I came by and asked, "How is that?" He said, "That's a lot better." It's simple things like that.

I work full-time at my job. We don't have anybody doing this full-time in our plant. We only have 435 people in our plant, so we don't have any full-time union reps or anything. Sorry, we have one president who goes back and forth between the two plants. We're all volunteer time. We don't have that luxury of being full-time.

Our company is really committed to want to get the safety thing down, but it has to be done correctly, done legitimately. These programs where you give somebody coffee and all that — somebody hurt themselves the other day and they said, "Well, there goes our coffee." I said: "Give me a break. That's got nothing to do with it. Let's get over there and fix that machine."

**Mr Stewart:** I don't think there are too many companies that go for just giving a coffee away.

Another thing you're talking about is education.

**Ms Henderson:** Very important.

1650

**Mr Stewart:** There's a statement that you can lead a horse to water but you can't make him drink. A concern I have is that you can give them all the education, but if they let complacency take over — and I believe some workers probably do that, as well as some employers — it makes it difficult to make sure that safety and prevention are going the way we both want.

**Ms Henderson:** You're right, but first I think they need the opportunity to have that training.

**Mr Stewart:** Absolutely.

**Ms Henderson:** I suggested we do lockout training in our plant and they said they already have lockout training. I said, "Let me see what it is," and they had a copy of the minister's rules. I said: "That's not lockout. That's just the rules. We have to apply it to each machine." Then I went and took a course on it. I asked the company if they'd pay for me to take the course. It was \$35.13 and they said no, because they didn't think it was necessary. I paid for it myself and I went. I came back and now they want me to teach it in the plant.

**Mr Stewart:** That's commendable.

You're talking about this particular gentleman who's had some problems. Over the last two weeks we've heard about people having problems for 33 years, up north, and 21 years, and we heard about Mr Walsh and Mr Postill today. Now we're hearing about this, which leads me to

say that what has happened in the past has not worked. I guess what we're out here for — and there will be amendments to this legislation — is to listen to you people and solve some of these problems that have gone on for bloody 30 years. It is not right, and we've heard it continuously. All governments have had a shot at it. Nobody's carried it through until now. We've got to make it work, ma'am, and it's with your help and the kind of comments you've made, and I appreciate them.

**Mr Christopherson:** Extend the hearings so we can do it properly then.

**Ms Henderson:** Can I just say one thing? Really look at that part where it says there will be somebody, some kind of watchdog or something that goes back and sees if those things are actually happening. How are we hiring supervisors in our workplace who have had no health and safety training? The law says they're supposed to be competent, so how did they get hired without having training first? They should have to have level 1 or level 2 before they even become a supervisor. They're supposed to be taking care of me. I'm not supposed to be taking care of them. They come and get me all the time.

**Mr Hoy:** Good afternoon, and thank you for taking the time to come here today. You sound like a person who likes your job —

**Ms Henderson:** I love it.

**Mr Hoy:** — and is very caring about the people you work with. I think the committee needs to, from time to time, get away a little bit from the regulatory talk about a bill and hear about real issues and real people. You're talking about a company that I think you said is probably above-average in safety.

**Ms Henderson:** For sure.

**Mr Hoy:** What is "6 Sigma"?

**Ms Henderson:** I don't know how to describe it exactly. You know how GM and Ford say, "By year so-and-so you have to reduce your costs by 8%, and then 5%, and all that"? That includes everything. Your safety costs have to go down. We're under the QS-9000 now, so when they come back next time, we have to show we have fewer modified injury workers, we have to show we have fewer safety problems and fewer union problems and all kinds of things. You try to change it to show continuous improvement. They've predicted that by the year 2000 in our plant we're going to average only four accidents a year or something like that. They're doing predictions ahead, what they're going to plan to get to down the road.

I can see ways where we can just eliminate it already, and that's not way down the road. One solution I told them about was that we had vulcanizing people. Every time they lifted this thing up, we had 15 people go off, and they were off for months at a time. We suggested I don't know how many times to put this thing on; it costs \$100. They put it on and we haven't — touch wood — had one person go off in eight years now. It cost \$100.

There was a thing where it was too much noise, bang, bang, bang; they have to do 100,000 tests on this car. I said, "The noise is too loud." They said, "It would cost us too much to do a change." I said: "You've got the parti-

tions from the office. You took them down and put them out in the garage. Try that." They brought it in, and it cost nothing except the material handlers to bring it in, and it worked.

Things don't have to cost a lot of money. Just think about the workers. Their nerves were jumpy when they went home at night. They said they could hear the door still slamming. We can fix problems quickly and easily if they'd just listen to us and think we have some credibility.

I'll give you another small example from last week. It was really awful. Corporate was down in the States and they heard of a young lady who put her hand into the hopper, and when it came out she didn't have this part of her hand any more. They immediately called all the extrusion plants and said: "Shut them down. Check your hoppers." We had already gone out and checked the hoppers in our plant before this. I had deemed that two were unsafe, because I felt that somebody could still get their fingers in. The head engineer asked me, what did I know about stuff like that, and that it wasn't true. Corporate said, "Go out and check them." They changed those two. I went back and asked, "How come you didn't change them when I said it?" He goes, "Human error."

I have credibility. I'm not trying to cost a lot of money. I just don't want anybody to get hurt, so we can get the compensation down to nothing in our plant and we can get big raises. Why should my company pay \$3 million or \$4 million a year into compensation? Why should compensation build this great big building? Compensation is supposed to be eliminated. We're supposed to be eliminating it and making the workplace safe, ergonomic and healthy.

**Mr Bisson:** First of all, I want to thank you for presenting to the committee. It is always refreshing to hear somebody who comes to the committee and speaks from the heart and brings what they see in the plant in human terms. As was mentioned earlier, a lot of presentations are technical and analytical and looking at the regulations.

**Ms Henderson:** I'll tell you, I was horrified today thinking about it.

**Mr Bisson:** Oh, no, you did a most wonderful job. I really have to say on behalf of all members of this committee that yours was a very a strong presentation. I can tell you that members of this committee listened to what you have to say.

I want to explore one point because I think you're really the first one to raise it in this way. You made a comment in your brief, "It's the committee's feeling" — talking about your health and safety committee — "that the company is willing to do most of the changes" for that modified job, "but want to wait until they absolutely have to." You keep on going on about how your company is a good one. If this one of the good ones, imagine how bad it is with some of the bad ones.

**Ms Henderson:** It is, it's awful. I listen to them out there: my sister at the hospital, what she had to go through. I told her for over a year that she should have applied for compensation and she wouldn't listen to me. Now that she finally has, they're telling her she was entitled, but at work they kept telling her she wasn't. They



were only giving her 12 hours every two weeks to accommodate her, but they weren't giving her any money.

**Mr Bisson:** That's the point. A lot of us worked in workplaces where the employers were somewhat reasonable, and even with reasonable employers we've had great difficulty trying to get them to see the light when it comes to making a situation more safe.

I had a situation when I worked underground where I was threatened with firing, and I was brought in to be fired before the manager for having called in the Ministry of Labour because the cage, the thing you go underground with, 4,000 feet down in this particular shaft, was in danger of failing. The bushings that hold the main clevis across by which the cable is tied was failing. We had been reporting it and reporting it to the health and safety committee and the company refused to do it. Finally, we said: "To hell with it. We're calling in the ministry." The result was that I was threatened with firing. I was strong enough to withhold and I knew my rights and I knew what I could do, but imagine that worker who doesn't. That's the majority of our brothers and sisters in the workplace, who don't know their rights or sometimes are fearful to stand up for them. I think that's something that can't be said enough.

**Ms Henderson:** That's why it's always over the loudspeaker, "Bonnie, will you come to the cutting room? There are strips on the floor," because they're afraid to go to the supervisor. I'm on a quality control job; I'm ac-

countable to my boss. Somebody who's making a production piece might feel influenced: "Next week you're getting midnights again because you spoke up." I can go and do that for them.

**Mr Bisson:** I just want to encourage you to keep on doing the fine job you are doing in your workplace. I wish our workplaces in Ontario had more people like you, who have the heart to do what they have to do.

**The Chair:** On behalf of all the members of the committee, I think you are an asset to your workplace. You were certainly an asset to the committee today.

**Ms Henderson:** Just take care of us, okay?

**The Chair:** Colleagues, before we adjourn, Mr Maves has the research statistics I think you were requesting, Mr Christopherson.

**Mr Maves:** I'll pass these over. In 1997 workers' compensation moved their rate groups to target rates to better ensure an appropriate distribution of assessment burden between industry groups on the basis of their injury cost experience. As a result, the home building industry had a 21% increase in their rates; 73 rate groups experienced rate increases, 136 experienced decreases, and in the remaining the 10 there was no change.

**The Chair:** Thank you very much. Colleagues, that's the final presentation of the day. We'll reconvene tomorrow morning at 9 o'clock. The committee stands adjourned.

*The committee adjourned at 1700.*







## **STANDING COMMITTEE ON RESOURCES DEVELOPMENT**

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### **Vice-Chair / Vice-Président**

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## Legislative Assembly of Ontario

First Session, 36<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 36<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 13 August 1997

# Journal des débats (Hansard)

Mercredi 13 août 1997

**Standing committee on  
resources development**

**Comité permanent du  
développement des ressources**

**Workers' Compensation  
Reform Act, 1996**

**Loi de 1996  
portant réforme de la Loi  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU  
DÉVELOPPEMENT RESSOURCES

Wednesday 13 August 1997

Mercredi 13 août 1997

*The committee met at 0900 in the Holiday Inn, Burlington.*

WORKERS' COMPENSATION  
REFORM ACT, 1996LOI DE 1996  
PORTANT RÉFORME DE LA LOI  
SUR LES ACCIDENTS DU TRAVAIL

Consideration of Bill 99, An Act to secure the financial stability of the compensation system for injured workers, to promote the prevention of injury and disease in Ontario workplaces and to revise the Workers' Compensation Act and make related amendments to other Acts / Projet de loi 99, Loi assurant la stabilité financière du régime d'indemnisation des travailleurs blessés, favorisant la prévention des lésions et des maladies dans les lieux de travail en Ontario et révisant la Loi sur les accidents du travail et apportant des modifications connexes à d'autres lois.

**The Chair (Mrs Brenda Elliott):** Good morning, everyone. Welcome to the standing committee on resources development. We're very pleased to be here in Burlington this morning.

*Interruption.*

**Mr David Christopherson (Hamilton Centre):** Madam Chair, on a point of order: I know that every time I have raised the issue of a motion to extend the hearings you've ruled it out of order, since this committee has already voted on it, but as you know, it is also within the rules that as a member of this committee I may seek unanimous consent to place such a motion. Therefore, I would ask unanimous consent.

In particular, I would draw attention that the parliamentary assistant, Mr Maves, has had some meetings with people in the Niagara region and certainly led them to believe he would do what he could to seek further hearings to allow the people who want to be heard to do so. I'm not saying he made those promises, but certainly he left that impression.

Regardless of that detail, the fact of the matter is, injured workers have every right to be heard and six days of hearings is not near enough.

Therefore, I request unanimous consent to place a motion that would have the effect of asking the government and the House leaders to extend the hearings of this committee around Bill 99 and allow injured workers their opportunity to be heard.

**The Chair:** Thank you, Mr Christopherson. You are quite right; this committee can only operate under the direction given by the House leaders. The motion is not in order. You can seek unanimous consent. Is there unanimous consent? There is not unanimous consent.

**Mr Christopherson:** For the record, it was the government members who would not allow the motion to be placed and it's the government that has denied injured workers.

## EMPLOYERS' WCB CRISIS COMMITTEE

**The Chair:** We would like to call now representatives of our first presenter this morning, the Employers' WCB Crisis Committee.

*Interruption.*

**The Chair:** Order, please. It is important that all presenters have an opportunity to fairly make their presentation. If presenters are not allowed to make their presentation in an orderly fashion, the room will have to be cleared and we'll continue. It is absolutely important that presenters —

*Interruption.*

**The Chair:** Order. The committee would now like to welcome the representatives from the Employers' WCB Crisis Committee. Would you please introduce yourself for Hansard. You have 20 minutes in which to make your presentation.

**Mr Richard Fink:** My name is Richard Fink. I'm legal counsel —

*Interruption.*

**The Chair:** Ladies and gentlemen, courtesy is due to all presenters. Welcome to the committee, sir. Please begin.

0910

**Mr Fink:** I'll try and persevere.

*Interruption.*

**Mr Fink:** It's almost as rowdy as the House.

The Employers' WCB Crisis Committee represents 150 small to medium-sized employers. They've been in existence for approximately seven years. They organized around the issue of fraud at the WCB, which the —

*Interruption.*

**Mr Fink:** — compensation board was refusing to deal with. I've produced a paper for the panel's consideration and I'd like to touch on a few of the items that I believe require a closer look.



Employers are currently sending to the board over \$2.5 billion per year in assessments. The employers wish that when their workers are returned to them following their time on compensation, they come back fully recovered and healthy, after having received the appropriate medical treatment.

The compensation board commissioned a secret panel of experts to recommend —

*Interruption.*

**Mr Fink:** The compensation board commissioned this panel in September to produce a report outlining how many weeks of treatment injured workers who have chronic pain —

*Interruption.*

**The Chair:** Order, please, sir.

**Mr Fink:** Madam Chair, it's difficult for me to maintain —

**The Chair:** I apologize. Please try to continue.

*Interruption.*

**The Chair:** Order, please. Please continue.

**Mr Fink:** The expert panel recommended up to 12 weeks of treatment. The compensation board adopted a proposed guideline of four weeks of treatment. The secret report was obtained by us under the freedom of information act. The experts remain secret. The reports by the experts themselves are secret. The only way we got this report was there was a vague reference, in the board's proposed policy, to the experts' report. The experts proposed 12 weeks and the board proposes four.

The problem here is that there are approximately 15 sections in the proposed Bill 99 compelling employers to return their injured workers to work. The new compensation act also sets up the first managed health care system in the province of Ontario in so far as 400 nurses are going to be hired by the compensation board to impose strict guidelines on the return-to-work times for injured workers suffering from chronic pain and other strain and sprain injuries.

The employers' position is, if it takes 12 weeks to return an injured worker to good health, why won't the compensation board allow 12 weeks of treatment? If the compensation board's nurses are now going to have the authority to limit health care in cases of chronic pain and strain and sprains, why won't the compensation board take the resources to return those workers to employers in good health?

Let us say, for example, that the worker goes the four weeks and at that point in time the compensation board says, "Your time is up," and the clinic that's treating the worker says, "We need another two weeks to treat the worker." Under the board's guidelines, that worker would not be entitled to two more weeks of treatment.

In the current system, if the worker is unhappy with the board's ability to pay or not pay for treatment, the worker has the opportunity to go to the Workers' Compensation Appeals Tribunal and state: "I would like to appeal this decision. I wish more treatment." Under Bill 99, workers' ability to go to the appeals tribunal on the issue of, for instance, a simple matter, which is, "I should have six

weeks of treatment instead of four," will be cut off because the appeals tribunal must follow the board guidelines and one of the guidelines will be that there are four weeks of treatment.

The appeals tribunal has been the friend of employers on a number of issues. I was hoping Tony Custode from Carborundum would come today. His case was that the compensation board overcharged him \$30,000. It's a small company, Canadian Carborundum, of 18 employees. He was overcharged \$30,000 because the compensation board ruled that he should be treated as if his company was still the larger Carborundum Ltd of some five or six years ago that had 400 employees.

The costs to Tony of this board guideline, this surcharge that was based on a board guideline, was \$30,000. The compensation board over the course of six years refused to change the decision based on the guideline. Tony Custode and myself attended at the appeals tribunal. The tribunal said that the board's guideline was not consistent with the other provisions of the act and other guidelines and overturned the decision.

Now Mr Custode, who's been out \$30,000 for six years, has asked for interest on the \$30,000 the board has held. The board pays interest to injured workers and the board certainly charges interest to employers if they haven't paid their assessment. The compensation board says: "No, we are not paying interest. Our computers didn't work for the past five years. We're only paying it in 1997." The employer is now again at the appeals tribunal.

There are numerous examples of the appeals tribunal dealing with board bureaucracy against the vicissitudes of the board being uncaring towards employers. A very strong suggestion to this panel and perhaps my central one is that both for the sake of workers and employers, where disputes arise between the appeals tribunal and the board over issues of board policy, it go to mediation, that a mediator could then mediate the difference and then report to the Minister of Labour, leaving the Minister of Labour with the final decision.

Questions of board policy are legal questions. The minister obviously has jurisdiction on legal issues. These matters should go to the minister.

The other remarks I have are in the paper. I invite the panel to read it. I'd be happy to take any questions you have.

**Mr Richard Patten (Ottawa Centre):** Thank you for your presentation. We haven't had a chance to read your document but we will do that.

Let me ask you, on your final point on WCAT, why not leave it as it is now? I agree with you in your analysis that this will cause some difficulty, that WCAT has been able heretofore to show where board policy doesn't stand up to a general reality or a justifiable claim, or general law, labour law or what have you, or that in fact it doesn't meet the legislation. Rather than bring in another third party, why not leave it as it is now where it has a degree of independence in order to raise those sorts of issues where it believes the policy of the board is inconsistent with

legislation or with prevailing general labour law in the community?

**Mr Fink:** I think the problem is illustrated by the interest policy, which is to say that notwithstanding the WCAT decision, the board still won't pay interest prior to 1997, whereas WCAT will, so you end up with two laws operating at the same time. I think that adds to the confusion of all the parties. It adds to inefficiencies as to how the system operates. It makes it uncertain. There has to be some certainty.

The WCAT's power, of course, is that it brings a lot more legal expertise. They are much faster than the board in terms of changing policy, so the WCAT has some advantages on policy and the board has some advantages on policy. They are the ones, after all, who have to balance the books; the WCAT doesn't. So one looks for a compromise between the strengths of those two bodies, and I think the compromise has to reside, ultimately, in the minister. I think a mediator who could try and bring a reconciliation would be an excellent idea. The final resolution has to be, I think, a political resolution. Does the minister want employers to have interest on their unreturned accounts prior to 1997 or not? Employers would just have to live with what is ultimately I think, in this case, a political decision.

0920

**Mr Patten:** Given the support you have for the role of WCAT, would you likewise be supportive of retaining the independence of the Occupational Disease Panel? As you know, it has done some excellent work and has been internationally recognized for identifying diseases related to workplace in the past and not only has saved money but has saved many hundreds of thousands of lives with its work and is greatly respected. Would you also see the need to maintain the independence of the Occupational Disease Panel?

**Mr Fink:** Our group doesn't have a position on that issue.

**Mr Christopherson:** Thank you, Mr Fink, for your presentation. I note that your slogan is, "We're concerned about the survival of Ontario industry," and I'm sure you can appreciate these people are here today because they're concerned about the survival of Ontario workers.

I'm sure that on most issues — you only deal with a few in the first couple of pages — there's no chance in hell we're going to agree on what the government ought to do with WCB. But I am interested in your comments on chronic pain because, from my quick read of what you've presented, you are somewhat critical of the direction the government's going in. Could you just expand on that for me in terms of your concern about the limitation the government is proposing to put around compensation for chronic pain?

**Mr Fink:** The employers agree that entitlement to chronic pain has to be limited in terms of both benefits and treatment. The key for employers, however, beyond limiting entitlement to reasonable time periods, is that those time periods have to be reasonable for both parties, that is, both the workers and the employers. The reason for that is,

right now most of my clients use treatment centres independently and pay for it out of their own pockets to help injured workers recover from chronic pain because it is less expensive to get the workers back up and running than it is to have them come into work, not be able to do modified jobs, go back out, have recurrences and go back on compensation, which is a very expensive situation. It is in the employer's interest to have the workers fully recovered. If that takes six weeks of treatment or 10 weeks of treatment or 12 weeks of treatment, it's a far more economical course than to let the matter drag on and fester.

**Mr Christopherson:** I'm sure you can appreciate how injured workers feel about the idea of limiting any kind of chronic pain. I would point to you and urge you to read a presentation we received from a medical specialist in this area who, in my opinion, made a clear case that ongoing chronic pain can reasonably and with a certain level of certainty directly relate to any kind of original injury. They have real concerns about what this means for the health of injured workers.

As much as I appreciate that you also don't agree with the government, I'm disappointed that you would see that there ought to be any kind of limitation. If you had followed these hearings and watched the number of injured workers who have come forward who have had their lives destroyed by chronic pain, and who find themselves virtually in poverty and with a quality of life that you wouldn't wish on anyone, I think perhaps you might feel a little bit differently about suggesting this ought to be limited. It's not fair.

**Mr Fink:** Outside of my counsel of the committee and the fact that we represent over 100 employers at our office, we also represent 70 employees who are currently appealing various issues before the compensation board. Personally, and the committee I speak for, we recognize that chronic pain does result from accidents and that workers are in bad condition on account of it. The problem of course is that chronic pain in part results from things not related to work and in part is compounded by the benefits being paid for it. Our conclusion is that there have to be some limits on entitlement but the limits should be fair and reasonable.

**Mr John O'Toole (Durham East):** Thank you, Mr Fink, for your presentation. You know that this report focuses on two very important parts: the early intervention and prevention in section 1, the purpose section, and in part V the early return to work. Those two things, prevention and early return to work and early intervention, whether it's workplace modification, are very important parts of this bill and are changes. Are employers prepared to work with this return-to-work language? Should it perhaps be part of accommodating the workplace where the employer is held responsible along with the employee?

**Mr Fink:** The employer's template for dealing with compensation claims currently is to provide suitable modified work. This is the way to assist the board in returning the injured worker to work and thus saving employers costs as they pay penalties for higher cost records.



The compensation act, as it is currently proposed, Bill 99, seems to indicate that employers may have to make work, which is different than providing suitable modified work. They may have to create jobs as an obligation under the section. You will see in my presentation that a new section has been added that is similar to the wording in the Ontario Human Rights Code. We're concerned about having to make work, as that really causes a great many inefficiencies within the workplace.

Short of that, my clients have been, over the last five years, attempting to go out of their way to accommodate the requirements of the worker, and certainly the thrust of Bill 99 is to put much more pressure on workers to return and much more pressure on employers to return them. I think overall that's good, but it's subject to the caveats of having the worker healed before he comes back.

**Mr Bart Maves (Niagara Falls):** Thank you very much for your presentation. You seem to indicate that an LMR was unappealable. As a benefit, though, LMR would be an appealable.

**Mr Fink:** LMR?

**Mr Maves:** Labour market re-entry.

**Mr Fink:** Labour market re-entry would not be appealable?

**Mr Maves:** Will be. Because it's a benefit and, as such, it would be appealable. I thought you had indicated in your remarks that you thought it wouldn't.

**Mr Fink:** The problem is that if the board has a guideline, which they're planning to do in the case of chronic pain, that is, there will be guidelines for how many weeks of benefits they pay, how many weeks of treatment, you'll be able to appeal up to the limit of the guideline, but you won't be able to appeal past the limit of the guideline. So although the issue is appealable, the scope of the appeal, which is the quantum of entitlement or, if you're an employer, limiting the entitlement, will not be appealable.

**Mr Maves:** The WCB is conducting a consultation on chronic pain. I'm wondering if that's what you were referring to.

**Mr Fink:** Yes, they've made proposals of numbers of weeks.

**Mr Maves:** It's quite public. We've been talking about that quite often.

**Mr Fink:** Yes, the proposal is public but the secret report by doctors upon which the proposals are made was not public. That paper has been sitting on the board's shelf since October. It really wasn't until I read what you have in front of you, which is the board's proposal where they keep saying, "The experts told us this. The experts told us that. The experts told us four weeks," that I wrote under the freedom of information act and said, "Could I please have these views of the experts?" All of a sudden, on July 29, I get a report dated September with all the views of the experts summarized — you don't actually read the experts — and the experts weren't saying anything in the summary of what the board was saying they were saying.

**Mr Maves:** Do you have any knowledge of the chronic pain program in Nova Scotia and if it has been successful or not?

**Mr Fink:** Yes. The board simply said, "Nova Scotia has adopted four weeks; we're going to adopt four weeks." There's no indication in Nova Scotia that the workers are recovering following four weeks of treatment. In fact, the board has been using a four-week community centre program which the Institute for Work and Health says was a complete waste of \$100 million.

The new program for chronic pain is going to have various different modalities. We work with the Health Recovery Clinic, which has three centres in Ontario. They've done studies with Dr Mitchell of the board over the last period of time and they report to me that six to 12 weeks is the minimum. The only place where four weeks could come from is Nova Scotia, and there are no scientific studies to indicate that they're having any success there in terms of treatment. They're having success in terms of saving costs, not in terms of treatment.

**The Chair:** On behalf of the members of the committee, we appreciate your bringing your ideas before us this morning. Thank you very much.

**Mr Christopherson:** On a point of order, Chair: I would like to request that you direct legislative research to look into this issue of secret reports and what is not being made public and report back to the committee.

**The Chair:** That's fine. We will do that.

0930

#### HAMILTON-BRANTFORD, ONTARIO BUILDING AND CONSTRUCTION TRADES COUNCIL

**The Chair:** I'd now like to call upon representatives of the Hamilton-Brantford, Ontario Building and Construction Trades Council, please.

*Interruption.*

**The Chair:** Order, please.

Gentlemen, would you be so kind as to introduce yourselves for Hansard this morning. You have 20 minutes in which to make your presentation. Welcome.

**Mr Mike Grimaldi:** My name is Mike Grimaldi, and with me is Norm Agnew, who is the president of the Hamilton-Brantford, Ontario Building and Construction Trades Council.

On behalf of the Hamilton-Brantford, Ontario Building and Construction Trades Council, we would like to thank this committee for the opportunity of appearing before you. We would be remiss, however, if we did not express our regret at the fact that this committee will not hear from hundreds, if not thousands, of injured workers who wanted an opportunity to appear before you.

This bill, unlike many pieces of legislation, is not simply housekeeping or a minor revision; rather it is the most significant rewrite of workers' compensation legislation in Ontario since 1914. It is a betrayal of Justice Meredith's historic compromise, where injured workers gave up their right to sue in exchange for a compensation system funded by employers. Now injured workers are also being forced to bear the costs of the system. At least this committee

should extend these hearings to allow injured workers the opportunity to make you understand that you are punishing the victims.

The reform is driven by the fallacy of the unfunded liability. Comments that there is a crisis in the system are blatantly false. The unfunded liability would be similar to an ordinary person being asked if they currently had in the bank all the money they would ever need to feed, clothe and house their family for a lifetime. Very few people are in that circumstance. The government, however, is asking the WCB to place themselves in that financial situation. If General Motors, Chrysler, Ford, Stelco or Dofasco were told to fund their pension plans on the same basis, all would have incredible financial shortfalls. Does this government expect private sector employers to meet this standard? I certainly doubt it. Every member of this committee knows that the unfunded liability is decreasing and will be eliminated without drastic cuts to workers' entitlements and benefits.

If the unfunded liability is in such a crisis, how can the government justify giving employers a decrease in their rates at the same time they're cutting workers' benefits? Why does the government not include the banks and insurance companies in the system if they really want to reduce the unfunded liability? Given the historic compromise in 1914, should it not be up to employers rather than workers to fund any liability?

There are a number of aspects of this bill that we disagree with, but we wanted to centre specifically on what we believe is express discrimination against construction workers. Although there are a number of areas we disagree with, we have decided to concentrate on three areas that more seriously impact construction workers than many other workers. The three areas are the application for benefits, the earnings basis and the return to work.

Application for benefits: There is no explanation or rationale for this change. A claim is now triggered by a medical report, an employer's report or a worker's report. Surely the intent should be to ensure accidents are reported, so what difference does it make how they get reported? Why should the onus be placed on the worker to apply for benefits? When this is coupled with the time limits imposed in this bill, it enables legitimate claims to be denied on the basis of no application or the timeliness of the application. How can this possibly be justified? If a worker is legitimately injured on the job, they should be covered under the act.

Mr Maves asked yesterday in the hearings, "How could we amend this section to make it fairer to injured workers?" You could make it fairer to injured workers by taking time limits out. What purpose is a six-month time limit in this legislation? If someone's hurt, they're hurt, aren't they? If they have a legitimate claim, shouldn't it be paid? What difference does it make whether they get it in within six months or not? Is this just to punish workers? What's the reason? If a worker is legitimately hurt, he should be covered.

In addition, what this section does is allow unscrupulous employers to intimidate workers into not filing

claims. It will encourage the hiding of accidents and lead to many more unsafe work sites. Currently, section 18 of the act does not allow injured workers, or any worker, to negotiate their rights under the act. This is in the act to protect workers from being intimidated. The new method of applying for compensation and the time limits will essentially render this section meaningless.

This section is detrimental to all workers but has a more severe impact on construction workers. Construction work is characterized by the fact that there are no seniority provisions. The work is transitional and cyclical in nature. Since the work is unsecured, there are few protections from layoffs. The government is asking workers in this scenario to ask their employers for an application form to file a workers' compensation claim.

Mr Maves talked yesterday about perhaps putting them in libraries or doctors' offices or giving them to the union, but it doesn't change the situation that many construction workers work in remote sites, they work in short-term employment where the job may only last for three or four weeks, and they're still going to be intimidated. That doesn't even deal with the question of forms and the complication of the forms. Many workers are going to lose their benefits just because they don't have the ability or don't know where to get or are intimidated from getting these forms.

Many workers will not file rather than being on the next layoff list. Besides the intimidation, what happens on remote sites? Where do workers get the application forms? In how many languages will the forms be? Many of our workers are first-generation immigrants who do not have English as a first language. What happens if the form is not filled out correctly? Will the claim be denied? How will workers be educated to the fact they must fill out forms or lose their opportunity to pursue the claim? None of the answers to these questions are in the legislation.

The result of this section will be huge decreases in reported accidents and, unfortunately, increases in health and safety violations and more severe injuries to workers. This section is a dream for unscrupulous employers and a nightmare for construction workers.

Earnings basis: This section, more than any other, discriminates directly against construction workers. Construction is fundamentally different from other industry sectors. It is by its nature cyclical and prone to boom and bust periods. Section 53 of Bill 99 will ensure that most construction workers will never get even their 85%, which is reduced, as you know, of their net average earnings. In boom years, when workers earn high incomes, they will be penalized because the cap will not allow them to collect higher benefits and in bust years they will be penalized because the WCB will take into consideration their "patterns of employment." It will mean that if there is an economic slowdown or poor seasonal weather, construction workers will be doubly punished for circumstances that are totally beyond their control. Where is the fairness or equity? We believe the hourly rate should be used to establish the earnings basis. The hourly rate is the amount the worker is losing by being injured so that should be



reflected in the benefits. It's bad enough that the worker is hurt without suffering financial devastation as well.

Construction unions deliver highly skilled workers to employers on an as-needed basis. How can we continue to attract highly skilled workers if they continue to be discriminated against by different levels of government? We are already finding shortages of skilled workers in this province, and this legislation will only make matters worse.

0940

The current legislation does little to protect construction workers in re-employment situations. Most construction workers never meet the thresholds already imposed by the act. There are many small employers in the field, and the work is highly mobile, with workers moving from job site to job site and from employer to employer. It is very unusual, therefore, for construction workers to establish the one year of employment history with the same employer in order to qualify for these provisions.

In addition, because of the physically demanding and strenuous work on most construction job sites, it's very difficult for accommodations to be made. Few jobs can be modified to accommodate a back injury or a repetitive strain injury. Bill 99 gives no indication how this serious problem would be solved. The bill is almost totally silent on re-employment provisions for construction workers. The return-to-work language will mean that most construction workers would be slotted into meaningless tasks if returned to the job site. We believe the minister should form a bipartite committee, with equal representation from the Provincial Building and Construction Trades Council and COCA, to negotiate regulations required for these re-employment provisions.

Taking the word "available" out of the loss-of-earnings benefits will only compound this problem. It makes absolutely no sense. Where's the government rationale to say, "We're going to put workers back into suitable employment, but it may never be available to you"? You're deeming people into phantom jobs. Is that your intent? You're basically stealing money from workers. Is that what this government wants to do? I don't think so. This provision will allow the WCB to place injured workers into phantom jobs and deem earnings rather than pursue meaningful employment.

We also strongly oppose any attempt by the WCB to outsource the formulation of labour market re-entry plans. We believe that return-to-work and vocational rehabilitation should remain with the Workers' Compensation Board and not be privatized. The Workers' Compensation Board has recognized the unique nature of the construction industry and set up a special unit to deal solely with construction adjudication and rehabilitation. We do not believe this expertise should be lost.

In conclusion, we believe this legislation will cause a significant increase in the number of serious injuries in the workplace; however, the impact will be hidden because of under-reporting. This will enable the minister to claim to have created a healthier workplace when the reality will be more shattered lives. We urge you to rethink this leg-

islation, extend the hearing process and allow injured workers to have their input.

I realize there are a number of first-term MPPs on this committee. I'm sure that when people ran to become public servants, to become members of the provincial Legislature, they did not do so with the intent to leave Ontario a worse place than they found it. I'm sure that every member of this committee wants to be able to leave, when their term is done or whenever they decide not to run again, and say, "I made Ontario a little better place when I was in the Ontario Legislature." I would hate to think that when you go back to your communities, when you get up in the morning and read in the paper that another injured worker died in this province, you'll have to say, "That was my legacy."

But I can tell you, by getting rid of the Occupational Disease Panel, by putting in the application for benefits for WCB, by further deindexing benefits, by putting time limits on, by limiting people's right to appeal and by eliminating the independence of WCAT, that's going to be your legacy.

**The Chair:** Thank you very much. We have time then for brief, and I emphasize brief, questions and answers for our presenters. We'll begin with the third party.

**Mr Christopherson:** Thank you both for your excellent presentation. A quick statement just to underscore the fact that we've heard in virtually every community we've been in presenters who are also convinced that the end result of the changes that, Mike, you've just listed will be fewer claims going in, fewer claims accepted, but that injuries are going to go up.

I would put the political point to this, that the government knows damn well what it's doing. It's a very clear intent, so that a year or two from now, when they go back out for re-election, they can say to the people: "See, our changes in Bill 99 did make a difference. There are fewer injured workers." The reality will be that there are fewer injuries reported but a hell of a lot more injured workers out there.

Mike, you outlined on page 4 some of the problems you expect your members to have in terms of the new filing process, that workers have to initiate the claim themselves. That's with the benefit of the excellent representation that the trade unions provide to your members. What do you think is the future for those people who don't have benefit of representation of a union?

**Mr Grimaldi:** Obviously, that's going to be compounded that much more in situations where there's no representation for injured workers. Our concern is especially workers who work in remote locations, workers who don't have English as a first language or workers who depend on their employers to hold their job. Without seniority provisions and without the protection of seniority clauses in collective agreements — and by its nature, in construction, because it's transitional, because it's cyclical, because there are a lot of short-term jobs, there are no seniority provisions.

How can anyone expect a worker to go up to their employer and ask for an application? If you put it in a library

or put it in a doctor's office, the worker has to have the skill level. Although many of our members and many construction workers are highly skilled in their trade, they're not necessarily skilled in the English language or skilled in filling out forms. Anyone who has done representation in front of the Workers' Compensation Board will tell you it's going to be a horror show to have these applications filled out and sent in.

**Mr John Hastings (Etobicoke-Rexdale):** How many companies in your part of the world, Brantford and Hamilton, do you represent and the number of workers, ball-park ranges? Referring to page 7 of your submission, I'd be curious to know the number of injured workers you've had in your area in the last two years, and out of that, how many of them had a successful return to work through the existing WCB, through the rehabilitation approach that has been there under the current arrangement?

**Mr Grimaldi:** We have over 10,000 workers who are affiliated with the council. There are hundreds of small employers and large employers who employ our workers. I couldn't tell you the exact number.

**Mr Hastings:** Five hundred?

**Mr Grimaldi:** That's as good a guess as any. The number of injuries that construction workers suffer, again you could probably get that information from the Workers' Compensation Board, but I don't have that available.

In the construction trade the current situation with return to work is extremely limited. There are very few workers with any type of permanent disability who are able to return to construction work because of the nature of the work they're involved in. In most cases, it's very heavy, very strenuous work. That's why it's so important that there is the vocational rehabilitation aspect of the current act. For these workers to try to get back to a situation where they can approximate pre-accident earnings, they can get into some type of retraining program, sometimes using their skills, because most of these people are extremely skilled in their area, and transfer those skills into another area so that they can be re-employed in that in some other field.

But as for actual re-employment back to the trade, especially for people who have permanent disabilities, it's currently extremely limited, and unfortunately this bill makes it much more difficult.

**Mr Hastings:** How many would there be right now?

**Mr Grimaldi:** I couldn't tell you numbers.

**Mr Hastings:** Could you submit that, if you can go back and look at your records? I'd be curious to know what the success rate was under the existing WCB vocational rehabilitation arrangement.

**Mr Grimaldi:** All I can tell you is that we wouldn't have those figures. The Workers' Compensation Board would, but I can tell you that it is extremely limited.

0950

**Mr Dominic Agostino (Hamilton East):** I want to follow up on your point about the discrimination aspect of the legislation. I agree with what David said earlier, that this is not a mistake. This was something planned. This is their way of trying to show — as they did with welfare.

The government promised they were going to drop the welfare numbers, so they cut the benefits by 22% and said, "All of a sudden all these people are not eligible for welfare, so our welfare rolls have dropped." That solved the problem. Without welfare, they have food banks and they're on the street. The same thing applies with this principle.

I was quite moved by your scenario about the discrimination aspect and how it affects particularly construction workers who have language barriers. My dad, 25 years ago, was injured in the construction industry. He had been over from Italy for two years. He fell 40 feet, because of an unscrupulous employer who didn't want to spend a few bucks on two by fours to secure an elevator shaft, and was paralysed immediately from the waist down. He was unconscious, taken to hospital, the whole bit. He was eight months in a rehabilitation hospital.

I can just imagine in that situation having to go through the process of those forms; someone who spoke no English at all having to worry about filling out forms, having to worry about how to go about filing a proper claim and those types of things. It was non-unionized, it was a small shop, it was in a remote area, all the things you've described here today.

I think there would be thousands of construction workers across Ontario who fit that scenario, particularly language skills and writing skills and so on. This bill penalizes all injured workers, but that aspect particularly penalizes construction workers who would be in that situation.

I agree with you. I don't understand at all the rationale behind doing this, why the current system is not allowed to work. I hope the government will allow an amendment to that as time goes on and will change that provision of the bill.

One point I'd ask you about is the privatization, on the last page.

**The Chair:** Just very briefly, to allow time for an answer.

**Mr Agostino:** You said that the return to work and voc rehab should remain with the board and not be privatized. Just so you're aware, that process of privatization in that aspect has already started before the bill has even been passed. What impact do you think this will have when that whole system of return-to-work planning and so on is done through an outsourced privatization mechanism?

**Mr Grimaldi:** I can only imagine, but I can tell you that it certainly has been our experience that the return to work and the vocational rehabilitation provisions currently, in our opinion, would be far better than a privatized system. I can see, and after hearing the previous presentation people here can well imagine, that you will have outside consultants who are going to be providing private rehabilitation hired by the company. They're going to have private rehab clinics that will doing private functional abilities evaluations for these companies. The companies are going to be the ones paying them. They're going to call the shots. You're going to get functional abilities evaluations saying people can return to work.



You're going to have private consultants saying: "Here's your return-to-work plan. We drafted it."

They're going to talk about independence, but their money is going to be coming from the employer. It's just going to be a horror show. At least with the Workers' Compensation Board — I'm sure people in this room will tell you numbers of problems with the Workers' Compensation Board, but at least you've got an independent agency that's doing the rehabilitation. With all its problems and foibles, at least there's a system there of some independence.

To go back to your earlier comment about the situation with your father, this is exactly it. If you go to the hospital, if the doctor files the claim, what's the problem with that? I don't understand. What are you supposed to do, stop the ambulance along the way and say, "Hold it. Pick up a form"? It doesn't seem to make any sense.

**The Chair:** Gentlemen, thank you for coming this morning.

#### UNITED STEELWORKERS OF AMERICA, LOCAL 1005

**The Chair:** I now call representatives from the United Steelworkers of America, Local 1005. Good morning and welcome.

**Mr Alan Hodder:** Good morning. My name is Alan Hodder. I'm the benefits chairperson for Local 1005 Steelworkers. With me are Warren Smith, president of Local 1005, and Jim Stevenson, benefits committee member for Local 1005.

Before we go into our brief, we too want to echo the sentiments and comments that have been expressed by people throughout this province, that being the limitation this government has imposed in terms of the time allotted for hearings on this important bill. When we hear consistently on an ongoing basis the fact that 130 people throughout this province, representing all the various stakeholders, have had the opportunity to comment on this bill, yet 1,300 people have applied for standing, we believe there is a grave injustice, not only through the writing of Bill 99 but that of the arrogance of this government in not following due process by allowing people the opportunity to speak in regard to this most important bill.

Having said that, I turn the mike over to Warren.

**Mr Warren Smith:** Local Union 1005, United Steelworkers of America, is pleased to have the opportunity to present our views and comments in regard to the government's intent to amend the Workers' Compensation Act through the proposed changes contained in Bill 99.

Local Union 1005, United Steelworkers of America, represents an active membership of 5,600 members at Stelco's Hilton works and approximately 7,000 retirees and surviving spouses. We are affiliated to the United Steelworkers of America, with approximately 70,000 members in the province of Ontario.

Workers' compensation makes up approximately 70% of our benefits committee's caseload. We make representation from initial entitlement through to the Workers'

Compensation Appeals Tribunal on behalf of our membership.

Local 1005 is no stranger to the Workers' Compensation Board or government, as we have participated in many forms of consultation, whether it be the Minna-Majesky task force on rehabilitation and service delivery, submissions on Bills 101, 162, 165, or, in recent years, Workers' Compensation Board hearings on entitlement and work-related stressors.

We believe that had the present government allowed the Royal Commission on Workers' Compensation to fulfil its mandate under the previous government's objective, then clearly this government, through haste, would not have taken this unprecedented approach of completely rewriting the act clause by clause. We do not state this for rhetorical reasons, as we are not blind to the fact that any new government always determines the needs of all its stakeholders when developing new legislation as it pertains to workers' compensation in Ontario.

Bill 99 in our minds is a regressive and arrogant approach by this government and does not take into account the historic tradeoff of 1914, but merely satisfies the employer community in an unbalanced approach in the hope of reducing assessments and obligations of the employers while stripping away the rights of workers as they pertain to benefits and entitlement issues.

I'm going to turn it back over to Al to make his presentation as chairman of our subcommittee.

**Mr Hodder:** When we came before this hearing, given that there are only 20 minutes for presentation, we certainly wanted to allow some time for questions by members of the committee. We're going to base our comments on strictly one area of the bill, but as we go further, we will be making a more detailed brief to the committee on all aspects of the bill at a later date.

We want to talk about Bill 99 and the role of WCAT. Having stated the above, primarily our focus and presentation to this committee will be the government's directive through Bill 99 in limiting the role of WCAT.

In 1985 the government of the day passed Bill 101, and one of the greatest gains for workers and employers in this province was the birth of an independent appeals tribunal commonly known as the Workers' Compensation Appeals Tribunal. WCAT was mandated through Bill 101 to be at arm's length from the Workers' Compensation Board and have the final say in the appeals process. WCAT is to act as a check and balance when determining the real justice and merits of any appeal which comes before it for adjudication. It is important that the government understand this, as Bill 99 threatens to strip this balance and handcuff WCAT through subsections 118(1) and (2) of the act collectively. This approach, in our minds, will completely undermine the intent of WCAT's existence, and the real merits and justice of all appeals will be lost, based on the tribunal being overshadowed by board policy.

Presently the board has the sole jurisdiction in all claims filed before it. The board develops policy as a result of regulations of the act and puts into place directives and entitlement issues. WCAT, on the other hand, is

responsible for a checks and balances approach and is there to make sure the legislative intent of the act is fulfilled. It's important for this committee to understand that, because as with any government, when we write legislation or amend the act, regulations are put forth as a result. There are meetings between the stakeholders and from that there is input on policy.

#### 1000

This is important from a historical point of view, as the board develops policies which infringe on the intent of the legislation. A clear example of this would be a policy directive of the board, should it be developed, which eliminates compensation for repetitive strain injuries, or RSI, as it is commonly referred to. WCAT, on the other hand, would clearly allow such claims based on the legislative intent as contained under clause 1(1)(a) of the act.

A more simple example is that a worker is off and has been prescribed chiropractic treatment. The worker is in receipt of a permanent impairment award or, previous to Bill 162, a permanent partial disability award which is recognized by the board and he gets a percentage of impairment as a result of the disability. The worker is off and during that period is prescribed chiropractic treatment. The worker returns to work, but the chiropractic treatment is needed as a result of the ongoing disability to maintain that worker back into employment — maintenance treatment. That's how the board treats that type of health care. In fact, the board has a policy that says a worker is only entitled to up to 12 weeks of chiropractic treatment and anything above and beyond that must be approved by the board.

It makes no sense to me, as a person who represents workers on an ongoing basis and who files hundreds of appeals a year on behalf of our membership, that there be a limitation in place for chiropractic treatment if that chiropractic treatment keeps that worker off the rolls of the WCB; the worker is not receiving benefits on a bi-weekly basis. Clearly the treatment is what's maintaining the employment for that worker, yet the board, in haste, cuts that worker off those benefits because of the policy. WCAT, on the other hand, would look at the legislative intent of the health care provisions under the act and is more prone to grant the continuing entitlement, taking into account the circumstances for which the health care was prescribed.

This government should not fear the tribunal in its present form, as clearly there is a fair and balanced approach by the main stakeholders, those being government, employers and worker representatives, in determining the real justice and merits of every appeal which comes before it. This is why the need for preservation and the need to maintain the balance that currently exists is more important today than at any other time in the tribunal's history.

The principle of tripartisanism that exists within the system must be maintained if there is to be a fair and balanced approach in determining the government's objective when amending the act. Clearly, the employer community has emphasized this point when they have made similar presentations on this subject. We, the pri-

mary stakeholders of the system, are not afraid of dealing in a fair and responsible manner, and we believe from the historical data available through the annual reports published by the tribunal that the government's objective is easily identified. We cannot emphasize this point enough, as Bill 99 will eliminate WCAT as it currently exists.

We could easily spend the remaining allotment of time providing examples to the committee on checks and balances, yet we will leave this to a more detailed brief which we will provide to the committee on the entire bill when we make our presentation on the clause-by-clause provisions.

Having stated the above, it is important that this committee clearly review the legislation contained in Bill 99 as it pertains to WCAT, as this government should have faith in the tribunal performing its original mandate.

We will remind the government that WCAT was established as a result of the approximately 700 complaints per year to the Office of the Ombudsman. In fact, Premier Harris was part of the standing committee on resources development, through Bill 101, which put into place the tribunal as it currently exists today. This is not rhetoric but is clearly a matter of record.

I have included an appendix to our brief which identifies currently existing board policy 03-02-10, which has a detrimental effect on our workplace. We're part of the basic steel industry; we have approximately five miles of plant we work in. The policy I've attached deals with parking lots and employers' premises. The attachments show how we have discussed with the board the policy, and attached to that is WCAT's interpretation, which takes into account the legislative intent of clause 1(1)(a) on the definition of an accident, and the response we received from the board. We leave that for the committee's perusal at a convenient time.

Having said that, we're more than prepared to answer any questions the panel might have of us at this time.

**Mr Maves:** Thank you very much for your presentation. I note that Local 1005 appeared in 1994 on public hearings on Bill 165. Since most of this brief is on WCAT, I wanted to start with the 1994 one. You said:

"WCAT was mandated through Bill 101 to be at arm's length of the WCB and have the final say in the appeal process, yet we know that this has not occurred. We state this for the very simple reason that the board, through section 93 of the act, has sole jurisdiction as it pertains to the matter of compensation."

I'm just trying to line that up with your brief. It seems like now you're saying WCAT, as it exists now —

**Mr Hodder:** The focus of our brief on Bill 165 was twofold, first, the issue of the board having the final saying. Through Bill 101, it was the government's intent, we believe, that the independent appeals tribunal would have the final say. We know that was not the case as a result of decision 72, in which the tribunal primarily dealt with a case surrounding the definition of an accident. As a result of that, under section 93 of the act, the board stayed the decision, in fact, reviewed through the board of directors the tribunal's interpretation on an accident and came



up with a different directive from that of the tribunal's decision.

Primarily, our focus through Bill 165 was that of taking away the board's jurisdiction under section 93 and having the intent which was originally placed through Bill 101, giving the tribunal the final say in all matters pertaining to appeals through that process.

**Mr Maves:** You were here at the start of the morning, I assume?

**Mr Hodder:** Yes.

**Mr Maves:** That first presenter talked about the possibility of having mediation where WCAT decisions and WCB policy clashed. Would you support that?

**Mr Hodder:** No, I would not. Our position very clearly is that the stakeholders present at WCAT, whether they are chairs appointed by government, workers represented by appointments through the Ontario Federation of Labour — and the employer community certainly has the ability to appoint sidespeople to that forum as well. Historically, the stakeholders — government, employers and workers — have always come to the ability to make decisions. I believe the evidence provided through the annual reports supports that. Since the inception of Bill 101, there have only been three instances where the board has had to review tribunal decisions and come out with either a directive or implement a policy as a result of those decisions.

**Mr Patten:** Thank you for your presentation. We've received a number of depositions from your brother and sister workers in different parts of the province.

We're concerned about the position of WCAT. As Mr Fink identified this morning in his example, if WCAT is stuck with living within stated policy, both treatment and compensation will be lost. We agree with that.

There's another aspect that is worrisome that I wonder if you might comment on. Then I'd like to ask you, if the present system is implemented, what you think this really means in human terms.

It seems to me that WCAT plays the role of the mechanism in the organization that provides the organization to continue to change and learn from the reality of what happens. There are changes in the workplace in terms of new chemicals being introduced, new mechanisms, new technologies that provide new hazards all the time. Any organization has to have the most recent knowledge of what's going on there. I think that's what WCAT has performed. It has been the mechanism to help the organization learn and adapt to the reality. If that doesn't happen, it seems to me that the board will be in a position of increased litigation. Would that be your view as well?

1010

**Mr Hodder:** That's correct. In fact, the act is written in such a way that primarily you have different sections which deal with various entitlements. You have in the act a schedule of diseases. Your point is well taken. Approximately 150,000 new carcinogens are introduced on the market every day of the week without an epidemiological study or without the ability to study the effects on workers. We cannot accept that workers who die as a

result of workplace exposure should not have entitlement to compensation because they don't fit into a particular schedule of disease which is recognized by the board or has been regulated through the government as a designated substance.

The act, primarily through clause 1(1)(a), allows the tribunal to explore that avenue through the definition of an accident. If it doesn't fit into a particular category, clearly the tribunal has the ability to go down a path to seek out and look at entitlement as a disablement issue, something that's gradual, with onset over a period of time. It gives them the ability to review other than what's contained in any particular section, looking at all legislative intent put forth by the government when making changes. That's particularly important given that this bill is doing away with the Occupational Disease Panel. It's important that that be maintained because of the evolutionary change taking place within the workplaces and the number of bodies piling up as a result of the employers not cleaning up those workplaces.

**Mr Gilles Bisson (Cochrane South):** I appreciate your bringing your expertise to this, because I really don't believe that the government members understand the importance of WCAT and what it means when it comes to accessing justice for injured workers and diseased workers.

I come from the community of Timmins, a mining community. I grew up in a community where it was a natural occurrence during the 1940s, 1950s and 1960s to see workers hanging on to sides of buildings trying to catch their breath because their lungs were shot from working underground. The doctors knew, the mining officials knew, our city officials knew and our governments knew, and nobody did anything. What happened is that a lot of these people, unfortunately, died.

For years, the Steelworkers union up in Timmins, of which I'm a member and quite proud of it, did a lot of work to try to shed some light on what was going on so we could find a relationship, if there was one, between what happened in the workplace and these people dying, and we never got justice. Why? Because it was up to the government of the day. It wasn't up to a scientific body. It wasn't up to something called the IDSP at the time. It wasn't up to the WCAT. It was up to the government to say, by matter of policy, that we either accept or don't accept that lung cancer, silicosis and other things that happen to people underground are work-related.

It wasn't until 1985 that the Steelworkers union, Local 4440, up in Timmins, with people like Omer Seguin, Moe Sheppard and others, were able to get before the WCAT, and I was a part of that. What we did simply was this: We found a test case — there were lots of them; we didn't have to look too far — we found an individual who had died. We documented his case and we piled all the rest of the other bodies with it and we brought it to WCAT. We were able to say to WCAT that there was a reasonable doubt, that what had happened to this miner is that he had got his lung cancer as a result of his working underground. If it hadn't been for WCAT, workers in this province

would have never got justice when it comes to what happened underground. Widows got compensated, but more important, the mining industry today is now recognizing that there is a problem, because it costs them money from their pocketbook because they had to pay it through their assessments. Now we're trying to address the problem to prevent it.

If we know that the WCAT is that important, is it that the government doesn't understand the importance or that they understand it far too well and are not willing to give workers access to justice?

**Mr Hodder:** Your point is well taken. I think you have hit the nail in both instances. I think this government clearly understands the role of WCAT when it comes to the development and being independent of the board, having the ability to look beyond policy, to look from a global perspective. It makes no sense to tie a tribunal's hands based on what is presently a directive by the board when in other parts of the world we're recognizing occupational disease from other studies, from other parts of evidence or information coming forward.

**The Chair:** Can you please wrap up? Our time has expired.

**Mr Hodder:** You've answered your own answer. I think this government knows quite well why they need to limit the role of WCAT.

#### HAMILTON CONSTRUCTION ASSOCIATION

**The Chair:** Could we please have representatives from the Hamilton Construction Association. Good morning and welcome.

**Mr Cameron Nolan:** My name is Cameron Nolan, and I'm the executive director of the Hamilton Construction Association. Our brief has been distributed to the committee members. I'm not going to read it verbatim, but I will talk to a number of the issues we raise in that brief.

I want to start by saying we're pleased to be here to make this presentation, particularly pleased that the needs of the construction industry are well supported by many people in the room. It's an interesting industry. Perhaps I should begin to articulate at least some of the components of the industry that are important.

Operations in a construction industry environment are quite unique compared with the rest of the employer rate groups; hence WCB legislative requirements which might seem obviously suitable to other industries are not really suitable to the construction industry. You've heard some comments about the fact that it is seasonal, that its employment opportunities are varied and wide-ranging; sometimes there's lots of work and sometimes there's virtually no work. The wide variances demonstrate that steady employment just doesn't readily occur, and these variances can occur not only between months of the year but between areas of the province. For instance, Windsor might be very busy and Hamilton as a community has been very slow in construction for many years now. So the

type of activity varies not only by month, not only by type of trade, but also by the area of the province.

Employees, therefore, are constantly starting and stopping work — they don't necessarily work even for one company in particular — and the industry has found that it has to look to other accommodations. For instance, when it comes to pension plans or benefit plans, of some importance to every worker, health and dental benefit plans, we have what are called multi-employer plans. This has traditionally been the case for unionized workplaces, where a union, for instance the electricians' union or the plumbers' union, would set up a welfare or benefit plan for their members, and as they work for companies A, B, C, D, the money is paid into a plan managed by the union. It's now also true of open-shop type of contractors. We have a situation where the industry has come together to respond to its own unique circumstances.

The other thing I want to point out to you, and it's an important issue, is that construction is one of the largest sectors in our economy. For every \$1 million of capital spending, it generates anywhere from 22 to 23 person-years of employment on average, and the costs of construction are significant contributors to the economy.

The other thing about construction is that it involves many smaller, mostly Canadian-owned companies, has a very high bankruptcy rate and a very low rate of return. There is high risk in operating the business, a low rate of return on capital investment, and these things do not bode well when the costs, in areas that the contractor can't even control, continue to jump them out of a competitive edge with the rest of the economy in the world.

Given the workers' compensation system, the unique characteristics and associated variables with construction industry circumstances really limit the effective application of the system to construction. Since larger, more sophisticated firms, however, can respond — I heard a presentation earlier about being able to fill out forms. While the larger firms have staff and resources available to them to help make those things happen more easily, smaller firms are more focused on survival. They don't have time to worry about filling out a WCB accident investigation report or even investigating an accident that one of their workers may have —

*Interruption.*

1020

**Mr Nolan:** It is much more difficult for the smaller firm to do that in an effective way, in a way that benefits all of the people concerned. In fact, in many of those smaller companies it is not necessarily their prime objective. They're trying to survive, as are many others.

For many years the industry has monitored and commented to the Ontario government, be it the present government or preceding governments, with respect to the workers' compensation system. We've done this through the Council of Ontario Construction Associations principally, better known as COCA. We continue to press for changes which will ensure that the construction industry can in fact meet the objectives.



I want to just emphasize that point again. There's an objective in mind — I'll talk a little bit about that — and there are ways to meet that objective. The system as it's presently defined works in the construction industry against meeting the objective. The industry itself, as it has with its multi-employer benefit plans, has a duty of care and a responsibility and does in fact seek to make those changes.

Before I get to the one issue I really would like to talk about, which is the return-to-work provisions because they illustrate the point that I'm making, I also want to talk a little bit about the safety record in the construction industry. The primary goal of workers' compensation is to provide a response to injured workers in the case where they can't provide for themselves. But that isn't what our goal is. Our goal is not to have injuries. Obviously if you don't have injuries, you don't have to be providing. Our primary goal is to reduce the number of injuries.

I can tell you, and there are charts in the brief, that from 1989 to 1996, the lost-time injuries within the construction sectors have decreased from 10.2 to 3.86 per 100 work years. That's the comparative average. It's a significant decrease in terms of injuries within the construction sector, and because it's per 100 work years of activity, it isn't because we've had lower activity; it's on a per capita basis almost. But sadly the WCB premiums to construction rate groups have significantly increased over the same period of time. These two things just don't make sense to us. We feel there is a tremendous cooperative effort taking place between management and labour in the construction industry that isn't being recognized in terms of the ability to deal with other aspects of the WCB legislative requirements and certainly isn't being reflected in the rates and premiums that our contractors have to pay.

Someone could say about the rates and premiums our contractors have to pay: "Who cares? That's the contractor." But it makes them less competitive, and it also makes them less competitive, for those firms that are particularly sophisticated or do a good job or really try to do the right thing, with those firms that don't. Even though they may be a small minority of the firms, it still makes it difficult to compete even within the sector, never mind from without the sector.

For COCA and for our industry, we feel that Bill 99 goes a long way to addressing some of the concerns we've raised with the minister and the staff of the WCB, and for that we're very much appreciative. But I'd like to comment on two or three things of particular import.

One is a three-day waiting period. We found that in the province of New Brunswick when they put in a three-day waiting period before benefits kick out — and I'm talking about payroll reinstatement benefits — the number of claims dropped by 50%. The research indicates that this arose because somebody who just had a hand sprain or did something of that nature which was particularly minor wasn't taking several days off because it was easy to do that and they had a readily available reason to do it. They were really actively interested now. The claimant had a role to play in the reinstatement back into work in trying

to do modified work situations, and that certainly has helped.

The other thing is that no insurance program of any kind, other than the WCB system, doesn't rely to some extent on the claimant's responsibility.

These are things that are important to us.

I'd also like to touch on the return-to-work provisions. Construction actually has 2.5 times more FEL awards than does any other industry. In other words, a worker is 2.5 times more likely to receive a permanent pension in the construction industry. It has been stated and it's noted that there isn't as easy a transition on a return to work for modified work within the construction industry, and certainly there's tremendous sympathy for that within the community, both in terms of doctors and others who are involved in the system. We believe that has had some impact. Consequently, we've asked the government to allow the industry to resolve that problem, because that 2.5 times higher cost impacts on our ability to deliver services in an economic and viable and competitive way.

We propose three specific suggestions, and I reiterate these:

(1) That the legislation direct that the Workers' Compensation Board cause labour and management within our industry to produce a return-to-work regulation. Give us the responsibility and the authority to do that jointly.

(2) Authorize the board to manage that designed system.

(3) Direct that subsection 41(8), subsections (1), (2), (4) through (7) and (9) not apply to the construction industry, and cause the board to direct the labour and management representatives to incorporate the principles that are found in those subsections into the regulations that they are authorized to produce.

These are important steps to letting the industry solve its problems, as it has so successfully in a couple of other areas.

There was a detailed submission produced by the Council of Ontario Construction Associations contained in its brief to this committee of June 25. I did not reproduce it. You already have copies; I'm sure you can review it again. I would urge you to do so. Of particular note, though, I would like to again iterate that COCA identified in their submission five or six points that I think are critical to the understanding of this committee.

(1) Eighty per cent of construction workers presently do not have reinstatement rights.

(2) Injured workers in construction are four times more likely not to have a job to go back to after their injury. The seasonal and transient nature of work is obvious.

(3) Injured workers are 2.5 times more likely to be awarded a permanent pension than average workers of other industries.

(4) Construction workers have limited vocational rehabilitation opportunities. Fewer specific alternative career opportunities exist even within the industry.

(5) The current obligations of the workers' compensation system really act as a disincentive rather than an incentive for employers to reinstate injured workers.

Let me just tell you about that. I worked very closely with the Labourers' International Union two or three years ago to try to define a way that the industry could have a reinstatement, return to work. We found roadblock after roadblock in bureaucratic regulations and paperwork etc to try and achieve that end. It wasn't easy; for example, as it relates to a worker moving from employer A to employer B and who would accept the responsibility for a recurrence of an injury. Would it be the new employer or would it be the old employer? Trying to define that was very difficult. It was an extremely difficult thing to get through. Hence the recommendation is, leave it to the industry to try and define its own regulations so that it can accommodate within the context of what it knows is its operation.

In concluding my formal remarks, I'd like to say that we're grateful to the government for the ongoing dialogue and openness with which the government has approached the Workers' Compensation Act reform.

#### *Interruption.*

**Mr Nolan:** I guess everybody has their definition. Anyway, the construction industry is particularly pleased that our input is respected. We recognize that you have a much larger constituency to deal with and we hope to contribute to the positive reform of the WCB act.

**The Chair:** Thank you very much. We have two minutes remaining per caucus, time for a brief question and a brief answer. We'll go to the Liberal caucus first.

**Mr Patten:** Thank you very much. By the way, many representations have been made and I think the committee understands now the uniqueness of your industry in many ways, with multiple employers, and how difficult it is.

It seems to me you're suggesting that the associations are prepared to take on more responsibility in terms of return to work. There was a recommendation that came through one of the home builders' associations, I think it was, that talked about a credit system for companies that employed workers who had to be in modified employment situations, that there would be some kind of credit system which would be an incentive to re-employ people in a position who may not be at 100% but at 80% or 90% or whatever it might be. Do you agree with that idea?

**Mr Nolan:** I'm not familiar with the specific presentation put forward by the home builders so it would be inappropriate for me to comment as to whether it's appropriate or inappropriate.

I can say, however, with respect to you saying the industry has agreed to accept responsibility, that what we're recommending to you as a standing committee member is that you request and authorize and mandate that we develop the regulation, but the responsibility for the management of the regulation, so that there's a neutral responsibility in terms of the control of it, rest with the Workers' Compensation Board.

Give us not only the tools but the mandate to develop the regulations that we know will allow both workers and management to comply, because that's what you want: You want compliance with an objective. You don't want rules and regulations; you really want compliance. You

don't get compliance today for a whole host of reasons. You certainly don't get uniform or even compliance. There are disparities within the construction industry within the province about how people can apply. I touched on that when I drew attention to the sophisticated versus the very small company.

You want compliance. Give us the tools to write the way in which we can in fact comply with the objective, and then give the board the authority and responsibility to manage that.

#### 1030

**Mr Christopherson:** Cam, thanks for your presentation. Welcome. I do want to say at the outset that I've known Cam for a long time. During my time as an alderman on Hamilton city council I worked with Cam on a number of community projects and I respect the efforts he makes on behalf of our community. However, he and I disagree vehemently on an awful lot of political issues, and today is one of those times, Cam. But I do appreciate you being here.

We don't have much time, but I did want to raise with you an issue that the Hamilton-Brantford, Ontario Building and Construction Trades Council raised earlier in their presentation. They're very concerned at the prospect of the return-to-work plans being privatized or moved outside the domain of the WCB, and I share that concern. It's based on the fact that WCB right now, while it's certainly not perfect, is not deemed to have a vested interest in either the employer's or employee's agenda, but to as objectively and at as arm's length as possible work to benefit the injured worker, taking into account the employer.

They're concerned that if it's privatized, he who pays the piper calls the tune. If it goes out to the employer paying for this being done, the plans that are going to come back are going to be in favour of the employer, and the injured worker is going to lose in that deal. I share that concern. Would you give me your thoughts on that, please.

**Mr Nolan:** Thank you for your opening. First of all, we may disagree on a lot of political things. I don't think this is political, and I think that's the problem, David.

What we propose is not to privatize. What we propose is that labour and management — there are organizations that represent organized labour particularly in the province of Ontario that work very closely with COCA, and that's who we would propose come together to define the appropriate regulations. There are circumstances that are beyond the control of contractors as they relate to hiring hall provisions and a variety of those things as well that have an impact, so these are critical components. It isn't privatizing the return-to-work provisions; it's allowing the industry to develop the right provisions that it can comply with.

The other thing — I just want to touch on this — is something I've believed for a long period of time. The problem with the present WCB system is that it forgets and ignores the most basic and important thing about being a human being and a worker in this province, and that's that what you want to do is to be working for a



living to provide for your family. That's what it misses. It misses that completely. It talks about regulations and forms and filling this and filling that and doing this and doing that and it forgets completely that the primary objective is to take injured workers and put them back in a position where they can provide for their families and they feel they're providing a meaningful contribution to society.

That's what I believe, David. That's why I think our industry has to do that, because only we know how it is possible, within the context of the way our industry operates, to achieve that.

**Mr R. Gary Stewart (Peterborough):** Thank you for your presentation, sir. I will agree with what you just said, that this type of thing should not be political.

*Interruption.*

**Mr Stewart:** Maybe people do. I don't believe it. I believe the two groups should work together and I think they can.

I'm very interested in what was said prior from the construction union folks, and that is that they also want to establish their own regulations working with the various associations, but I'm curious what type of regulations there might be. Can you give me just an idea of what type of regulations? I like the idea of the groups organizing it and operating it etc, but what kind of regulations might we be talking about?

**Mr Nolan:** Ones that will work.

**Mr Stewart:** Absolutely. But can you give me just some type of an idea? Because I'm hearing about it but I don't hear what they might be.

**Mr Nolan:** I think it would be premature of me to give you something that is going to answer your question as you'd probably like, but let me just give you one example. I touched on it earlier, so let me expand on it now that you've asked your question.

Workers work for many different employers. The present WCB rules are that you have to return to work with your present employer, and I forget all the ducks in a row and how they all happen, but that just doesn't happen in our industry. Yet that's what the Workers' Compensation Act mandates, that it has to happen. So you have an employer who cannot have a worker return to work, as opposed to if the act regulations said the industry has to return that worker to work. That's a different kind of mandate, because the employer in the act is the individual employer.

In the construction industry, the nature of the industry is that the employer, in the more generic sense, is in fact the industry. It is a multiplicity of Ontario numbered companies, if you will. Therein lies the distinction. The regulation would say the industry has a mandate to return — I'm obviously being philosophical in answering your question, but that's one distinct example between the present circumstances and how it might be related in future circumstances if you let the industry do what it needs to do.

**Mr Stewart:** We heard a suggestion up north about pooling of workers because certainly bigger companies

may have modified work where a small may not. Do you think something like that could work?

**Mr Nolan:** It can work as long as you're not transferring the responsibility that exists from individual employers, and in fact probably from a select number of employers, to the larger pool inappropriately.

Once again, let me illustrate. Worker A is with a company and moves to Company B. So Company A today; moves to Company B. They can be reinstated with Company B, returned to work because company B has now got the next contract and Company A doesn't have any; they are estimating other work. By moving to Company B, however, does Company B accept the responsibility for the previous injury and all the costs associated with that that go into the CAD-7 rating and the various other calculations the board does to relate to premiums and surcharges and so forth? The problem we have is, where does that go? The regulation would address that kind of problem as well and make sure that it is properly allocated.

**The Chair:** Thank you very much. The members of the committee appreciate your taking the time to bring your suggestions before us today.

#### UNITED STEELWORKERS OF AMERICA, HAMILTON AREA COUNCIL

**The Chair:** I would like to now call representatives of the Hamilton Steelworkers area council, please. Good morning and welcome.

**Mr Ray Kitchen:** My name is Ray Kitchen from the United Steelworkers. I'm a workers' compensation rep. With me I have John Roach, who is also a steelworker and also an injured worker, and Bill Ferguson, who is the vice-chair of the Hamilton Steelworkers area council as well as the president of the United Steelworkers, Local 8782.

First of all, I'd like to thank the government standing committee for giving me the opportunity to have input into such an important decision-making process, or at least going through the motions and giving me the impression I've got some kind of input into the decision-making process.

Just a note, and this point has been made before: I feel it's a shame that less than 10% of the hundreds who asked to be heard on such an important issue as this anti-worker bill will be allowed to speak. I would like to make a point. I'm asking the committee to go back and ask to extend these hearings so at least 50% of the workers who asked to be heard — because their lives are at stake. Workers have been paying for this with their lives, their health, their safety, for years.

Before I go on, I would like to make a comment on workers' compensation. Workers' compensation hasn't been here forever. Workers' compensation evolved in 1914 with the input of one Tory, ironically, Sir William Meredith, which in turn created the Workmens' Compensation Act. When we look back some 80-odd years ago, the Workmens' Compensation Act was based on five basic principles. Right now, to this very day, they're still working on those five basic principles, up until Bill 99.

Number one is a security of payment. The idea behind that is that if a worker was ill or injured from workplace exposure or a workplace accident, that worker would receive some kind of monetary benefit so they can get by until they're able to return to work again. Do we have that with Bill 99? No, we don't.

1040

Workers' compensation, to be a no-fault system, means that if a worker trips over their shoelace and falls down a flight of stairs, and if the employer does not keep those stairs maintained, the worker is entitled to workers' compensation. In turn, the worker gave up the right to sue. That is a big issue — the worker gave up the right to sue.

Employer-funded collective liability: The workers' compensation system is funded by the employers, as we've all heard before today, not the taxpayers, which is a fallacy. Also, last but not least, it's to be administered by an independent agency. This independent agency is the Workers' Compensation Board.

Bill 99 proposes to discard these principles that have governed workers' compensation for over 80 years. I feel this proposed legislation sets workers' compensation back those 80 years in time, when an employer was able to slaughter and maim, with very little responsibility and accountability to the injured workers.

Next I'd like to talk about Bill 15 for a few minutes. We go back to December 1995. I feel that Bill 15 paved the way to hell by removing the bipartite board of directors, which eliminated the input of the most important stakeholders; that is, the injured workers themselves. They've been paying into the system with more than money for years: their lives, their blood, their families.

The current board of directors has been replaced by a makeup of employers and insurance-oriented people who will ensure that further policy will be geared towards saving the system and employers money instead of addressing the concerns of injured workers.

The Workers' Compensation Board was developed in 1914. Bill 15 also removed the time limits for the Ministry of Labour to issue policy direction to the Workers' Compensation Board. How long does a worker have to wait after a decision is made now?

One of the issues I'm involved with in our workplace, and we've been struggling with it for years, is the return to work. I've heard in some of the previous presentations that return to work is one of the most important parts of Bill 99. If we take a look at Bill 99, it is going to prevent workers from returning to work at jobs they can do, create hurdles and put workers out on the street on social assistance.

Bill 99 is going to force injured workers to return to the workplace and force them into jobs they cannot properly do within the scope of their medical restrictions. In many cases I myself have returned an injured worker to the workforce in a job they could perform with their injury. In a number of these work-related cases, the assistance of the workers' compensation rehabilitation case worker was essential.

Face it, the employers don't want to take these injured workers back to work. Sometimes I call it the Adolf Hitler theory, where the employers only want the able and the physically fit, so they can get the most bang for their buck and get rid of those workers who were injured on the job. By eliminating the initial involvement of the vocational rehabilitation case worker, where are these injured workers going to be down the road?

Bill 99 removes voc rehabilitation assistance and replaces it with a punitive labour market re-entry plan. This will create a climate where the Workers' Compensation Board will have less involvement in assisting injured workers to return to the pre-accident workplace, and in turn result in a more difficult time in returning workers to a job they can physically do — if we can return these workers to the job. This will also lead to workers being forced into jobs beyond their medical restrictions. This may lead to further injury and/or a suspension of their worker's compensation benefits.

Let's take a look at section 40 of the proposed act. It will require employers to contact the workers, "as soon as possible after the injury occurs and maintaining communication throughout...the worker's recovery or disability." I ask the government, what does "as soon as possible" mean? Does that mean as soon as that worker opens their eyes after surgery? Does it mean when that worker's gurney can be wheeled to the nearest telephone so they can call their employer? Obviously, this legislation will leave the injured worker open as fair game for constant harassment from their employer.

We take a look at subsection 40(2). It requires the injured worker to contact their employer as soon as possible after the injury to help identify suitable work. If the worker fails to do so, the injured worker may be accused of failing to cooperate. We've all heard that before, failing to cooperate. What happens when we fail to cooperate? Hey, those benefits are gone. They can be suspended. We might not see those benefits. I ask again, what is the definition of "as soon as possible"?

For an example, I'll use my workplace. We'll go back to my workplace, which is a very strong unionized environment with the United Steelworkers and where we've negotiated, I feel, fairly good return-to-work language. Although we've got fairly good return-to-work language for those workers who are ill and injured in the workplace, as well as sometimes off the job, we have some difficulties bringing workers back, especially those workers who have permanent disabilities and who need placement for the rest of their working life.

Some of the points we find difficult in situations of bringing these workers back to work are:

(1) The employer will offer modified work to a worker, and when the injured worker returns to work the employer tries to force the injured worker to work beyond and outside their medical restrictions. In turn, the worker has to be laid off again. The worker is going to become more disabled, hurt themselves and not be able to perform and do the job.



(2) The modified work offered is short-term and not for the duration of the injury. The worker may be forced to lay off work, which could provide difficulty in reinstatement of workers' compensation benefits, or a worker may be forced to perform work they cannot do safely. Every worker wants to go to work with dignity, take a paycheque home, look after their family. They may not be able to do that under Bill 99 if they're forced back to work prematurely.

(3) This is a little bone of contention I run into on many occasions when bringing a permanently disabled worker back to work: When a worker has to be accommodated on a permanent basis, all of a sudden the employer tells us, "Hey, we don't have a job available within those restrictions." There are no jobs available for that worker, although if that worker was disabled for two weeks, there would be more than enough modified work available.

Next, subsection 41(3) of Bill 99 indicates that the board is no longer required to determine the worker's level of fitness unless there is a disagreement between the employer and the worker. The lack of Workers' Compensation Board assistance in the injured worker's return to work may pressure the worker to return to work before they are medically fit. This will increase the risk of injury, increase the cost to the system and, in turn, if these claims are allowed, will increase the cost to the employer. I know all the employers are so worried about their dollars.

If in a well-protected union environment like ours we experience significant problems in returning injured workers to work, I expect under Bill 99 our problems will escalate. Let's look at those poor workers who are not from a union environment. It leaves those workers, when they're returning to work under Bill 99, with less representation from the Workers' Compensation Board and in the hands of those employers. All these workers are trying to do is to make a decent living for themselves and their families with dignity and go back and forth to work.

The next point I want to touch upon is the Workers' Compensation Appeals Tribunal. The Workers' Compensation Appeals Tribunal was established in 1985 under Bill 101. The Workers' Compensation Appeals Tribunal allows a decision by the Workers' Compensation Board to be appealed to an independent body. This independent body is outside the structure of the Workers' Compensation Board. This allows an unbiased review of the objections versus the prior internal review system that the Workers' Compensation Board had prior to 1985, which reviewed the issue within the structure of the Workers' Compensation Board. We didn't feel this would review a case based on its merit and justice but basically on policy, how the Workers' Compensation Board interpreted its own policy.

1050

The Workers' Compensation Appeals Tribunal now has the independence to overturn decisions of the Workers' Compensation Board as well as directing the board to expand and create new policy. Bill 99 proposes that the independence of the Workers' Compensation Appeals Tribunal become obsolete. If this anti-worker bill is

passed, the Workers' Compensation Board will be able to dictate to the appeals tribunal which policy, if any, will be used in reviewing the case.

This means ultimately that the Workers' Compensation Appeals Tribunal will only have jurisdiction to rule on whether or not board policy can be applied correctly, and will be unable to judge a case fairly on the real merits of the issue and be unable to interpret the act themselves as they have done in the past. I understand by reviewing Bill 99 that in this case, where no policy governs the issue in dispute, the Workers' Compensation Board may allow the tribunal a big favour by making a decision without reflecting on board policy.

This bill will return the power of decision-making to the internal structure of the Workers' Compensation Board as it was previously determined over 12 years ago. We all know it didn't allow an independent and fair review of the Workers' Compensation Board decision in a dispute, as identified by Paul Weiler and the creation of Bill 101.

Bill 99 proposes time limits on filing appeals on issues in dispute. Under the present system there are no time limits on appeal. In many cases an injured worker has little knowledge of the workers' compensation system and does not understand the full impact of the Workers' Compensation Board's decision. The average shop floor worker — I know in previous briefs there were educational problems and English-as-a-second-language problems mentioned. We don't expect the average person to be a labour lawyer or a Philadelphia lawyer. What we want to see is that an average person, if they injure themselves on the job, should be able to receive workers' compensation benefits without being restricted to time limits.

Once they do understand the full impact of the decision, or if they do, they may have to shop for a representative, they may have to obtain medical information, they may have to make a medical appointment or they may have to wait for a return response from the Workers' Compensation Board. Any reps or anybody who's dealt with the Workers' Compensation Board before knows that sometimes it's like pulling teeth to get a response from these people, so six months can slip by fairly rapidly.

If, in the maze of this confusion, the injured worker commits the crime of not filing within the parameters of the time limits, they cannot file an appeal. Even if this appeal could have been easily resolved in time, at the time the injured worker will have no recourse in the bureaucracy of this proposed system. We'll paint a scenario: A worker falling victim to failing to file within the time limits could quite easily end up on social assistance, with no benefits from the Workers' Compensation Board, and depend upon the social net that's provided by the taxpayers, and the employer would walk scot-free as far as penalties for that injury are concerned.

I just want to touch on the Occupational Disease Panel for a minute, which is a very important point that we've heard before. Bill 99 will eliminate the Occupational Disease Panel. The Occupational Disease Panel has been determining diseases caused by the workplace by partici-

pating in independent research for years. Many workers and survivors have been compensated for diseases caused by exposure in the workplace. The Occupational Disease Panel was the only hope for survivors to have their claim recognized by the workers' compensation system when a family member has passed away due to an occupational disease.

Let us not forget that the Occupational Disease Panel has saved the Workers' Compensation Board millions of dollars. How have they done that? By identifying the relationship between the disease and the workplace. In many cases the panel has provided health and safety information to the health and safety people and the employers that feel like participating. We have been able to prevent a repeat of these diseases from occurring in the future.

Without the Occupational Disease Panel, I feel that the number of workers who die due to exposure in their workplace annually will skyrocket. Most of the workers or their families will receive very little or no compensation. Let us lower claims by preventing injury and disease, not by ignoring them and creating legislation to pretend they don't exist.

In summary, in this brief I have voiced my concerns on how this anti-worker legislation will devastate every injured worker and their family in Ontario. I have only been able to touch on the tip of the iceberg of the dangerous aspects this bill will have on workers. After reviewing this proposed piece of — if we want to call it a piece of legislation, I have yet to find anything in it that will benefit injured workers in Ontario, aside from a few of the farm workers may be covered.

Other damaging aspects of this bill: We're cutting the benefits from 90% to 85% of net. We're reducing inflation protection for unemployed workers and the disabled by 75%; cutting future injured workers' pensions in half; setting arbitrary time limits on chronic pain; privatizing voc rehabilitation; deeming workers to be able to obtain jobs which are not available and setting their benefit levels in the pretence that a job is available; eliminating chronic stress.

The Harris government has not really surprised me in the makeup of this anti-worker piece of legislation. They have followed suit, as they have in other bills they've proposed: attacking labour, the sick, the injured, the uneducated and the most vulnerable people in this province.

It has always been said the workers are the backbone of the country, so why is the government of Ontario creating a piece of legislation that paints them as criminals and abusers of the system when they become injured and unable to work?

I ask this committee to take this back to the provincial government, to the Ontario government, and recommend trashing this piece of garbage we're speaking on. Thank you again. I'll entertain any questions the committee may have.

**The Chair:** Unfortunately there isn't time for questions, but on behalf of the members of the committee, I thank you for coming forward.

**Mr Maves:** You mentioned in your brief that you had return-to-work language at your plants. I wonder if the committee could receive a copy of that.

**Mr Kitchen:** Absolutely.

**The Chair:** Thank you. That would be appreciated.

#### SOUTH WEST WORKERS' COMPENSATION STUDY GROUP

**The Chair:** I'd like to call on representatives from the South West Workers' Compensation Study Group, please. Welcome.

**Mr Andrew Bomé:** My name is Andrew Bomé. I'm a staff lawyer at McQuesten Legal and Community Services in Hamilton. With me today is Doreen McPartlin. She's a community legal worker with Hamilton Mountain Legal and Community Services. We're here today to speak on behalf of the Ontario Legal Clinics' South West Workers' Compensation Study Group. The study group is made up of various workers in legal clinics in southwestern Ontario who represent injured workers. Some of the more experienced workers' compensation advocates in the legal clinic system are regular attendees at our meetings. Together we've had many years' experience representing injured workers and we know what their needs are.

I'm going to spend a little bit of time talking about the format of our presentation. You've been given a written brief. This was presented to the committee about a month ago. We're not going to be spending a lot of time reading from that brief. We're assuming you've either read the brief or that you will read our brief. What we will do is we will be giving individual case examples that illustrate some of our concerns with Bill 99. I'll be speaking first and my cases will focus on subsections 12(4) and 12(5) of the act, the mental stress sections.

#### 1100

The first case I'll be discussing was my first chronic occupational stress case. This case was allowed by the Workers' Compensation Appeals Tribunal. If you're interested, it's decision 227/95.

My client worked as a commission salesperson in a very high-pressure, high-stress atmosphere. This didn't bother her. What did bother her was the abuse she faced by senior sales staff and by the general manager at her store. The general manager was described by one of my witnesses as having the classic makeup of a schoolyard bully. My client was his favourite victim. He would constantly belittle her and berate her. He would be yelling and screaming at her just about every day. The abuse she faced at the workplace culminated in an incident in the lunchroom, where a senior sales staff person decided she had stolen one of his sales and started screaming at her. The evidence indicated he was approximately this far away, a few inches, when he was screaming at her. He also threw a chair at her. To this day, she doesn't know whether the chair hit her.

Management decided to blame my client for this incident and did nothing to the other salesperson. The abuse continued and within six months my client had a nervous



breakdown. This happened about seven years ago. Since that time that I know of, she has been hospitalized approximately three times in a psychiatric hospital. She has also attempted suicide at least twice.

My client suffers, obviously, from a very significant depression that prevents her from returning to work and it is a direct result of the abuse she faced in the worksite. I feel this harassment she faced at work ruined her life. Bill 99, as it reads today, would deny her any compensation for this.

The second case I would like to talk about is one I am dealing with right now. It's working its way up through the appeals system at the WCB. My client is a woman who was a victim of sexual harassment. Her harasser can be described as a workplace Don Juan. He had a history of making advances to his female staff. This worker has since been terminated from his employment for this reason. As a result of the sexual harassment that my client faced, she suffered a year-long bout of depression that kept her off work. Thankfully, she was able to put this behind her. She has since returned to work. She has no wage loss and she has only a very little disability as a result of this. My client clearly suffered because of this sexual harassment, but because that would be considered as a workplace stress claim, Bill 99 would deny her any compensation.

The third case I'd like to discuss with you may or may not be a mental stress case. I've only recently been retained on this case, so I don't know how the board is going to deal with this yet. My client was assaulted many years ago. One day another worker took her, grabbed her breasts, forced her into the women's washroom, where he proceeded to rip some clothes off her, kiss her, touch her breasts and other parts of her body. She suffered no physical injuries as a result of this assault. However, because of this assault, she suffers from very severe depression and post-traumatic stress disorder. The biggest manifestation of this is that she is seriously agoraphobic. She will go for weeks without leaving her apartment.

My client is the most seriously psychiatrically disabled worker I have ever represented. My fear, and I'm not sure whether this is a legitimate fear, is that because she suffered no physical injuries as a result of this attack, this case will be treated by the board as a mental stress case. Current policy says that it has to be sudden, shocking and life-threatening to be compensated. Certainly the assault was sudden, it's clearly shocking; I don't know if it can be characterized as life-threatening, and my worry is that the current board policy would not compensate her for it.

In this kind of case, Bill 99 states that the compensation is for only the acute reaction to a "sudden and unexpected" mental stress. It seems to me that, given that language, the long-term, permanent damage my client has faced wouldn't be compensated by Bill 99.

Each of these three women has suffered horrible experiences at work. These are experiences that nobody should have to face, and if they did, they should have some form of redress.

Since all of these experiences can be characterized as mental stress cases, Bill 99 would take any redress these women and women like them would have. This is not right and this is not fair. Because of this, I would urge you to remove subsections 12(4) and 12(5) from the legislation.

I'm now going to turn it over to Doreen and she'll continue our presentation.

**Ms Doreen McPartlin:** I'd like to thank the committee for giving us the opportunity to speak today. Since none of our clients have had the opportunity, before I touch on chronic pain I would like to tell the committee about one of our cases, which I hope addresses several issues raised this morning about suitable modified work, but particularly the human cost experienced by injured workers which seems to be forgotten; it's always the financial implications.

One of the first presenters in Toronto on Bill 99 commented that Bill 99 appears to be based on the false assumption that workers would prefer to stay home, receiving benefits rather than working. I hope this case illustrates that this is not the case.

For the sake of anonymity, I'll refer to him as Bob. He came to our office. He was 32 years old. He had two children, was married, living with his wife. He'd had a serious work-related injury to his shoulder and back because he worked with heavy equipment and heavy items, but there was no problem initially. His claim was accepted by the board and he received benefits. The problems arose when it was time for him to return to modified work. His employer had said they could provide suitable modified work. He went back and he began to aggravate his condition. The work was supposedly modified, but definitely not suitable.

What amazed me in this case was that during that first work trial, his employer actually disciplined him twice for not keeping up the pace, which clearly showed they hadn't really offered the work in good faith. Eventually he aggravated it so much he had to lay off again. Of course, benefits weren't paid and that's when he came to us.

We started to go through the appeals process, but then he decided he wanted to try again and went back — the same pattern, he laid off.

When he went off the second time, the board sent in a worksite analyst. Bob wasn't invited to be present, neither was his union rep; he was in a unionized workplace. Apparently one of the managers demonstrated the job, the worksite analyst decided it could be done and no benefits were paid. He was told this. He wasn't given a copy of the report. He went back one last time, couldn't do it, laid off and the employer terminated him. We then began the appeals process.

We ended up in WCAT three years later. All benefits were restored to him because WCAT determined that the work was not suitable. A month after he was terminated — he was on welfare for a month — he found a security job. This company only employed part-time security guards. He took it. It was in Mississauga. He had to commute. At the end of each month he was receiving less than

he would have done on welfare, but he wanted to work. He did this for three years.

By the time he was successful, VR granted him two more years of retraining and he ended up getting five years' full benefits. But by the time we reached WCAT, his home had been repossessed, his marriage had broken up and at the time of the WCAT hearing he was living in a basement room of a relative and his life was shattered, he was so depressed. He had worked all that time. It wasn't that he was on welfare. I hope that when this bill is being looked at, the human cost is borne in mind and not just the financial cost. Bob clearly wanted to work, and we see so many cases like his.

Now I'll just touch quickly — hopefully we still have time — on the chronic pain. When we were preparing our brief, we had no access to the contents of the proposed regulation regarding chronic pain. We knew it was going to be restrictive but we didn't have the actual wording.

I only received a copy of the proposed draft policy statements a few days ago and I'm appalled by the contents. For those workers who develop permanent disabilities resulting from chronic pain, there is no longer any entitlement to compensation, and there are thousands of workers who suffer from chronic pain. Presently, if someone has very severe chronic pain, they can receive up to 95% in a NEL award.

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It would appear that benefits for chronic pain will only be paid for a maximum of four weeks after the normal healing time, and even that has qualifications: only if the worker participates in a pain management program, and even the participation has qualifications, because if more than 12 months have elapsed since the date of the injury or a recurrence, then the worker can't even participate in the pain management program. So presumably this rules out everyone who goes to appeal, because few appeals are resolved within that time period, and for four weeks, perhaps workers won't think it's even worth attempting.

Until now, the medical profession and the board itself agree that chronic pain is real to the worker, disabling from employment and, more important, often not preventable or curable, which the proposed policy assumes. In our respectful opinion, no policy justification of any weight has been offered for the proposed limitations on chronic pain entitlement. It's a shameful attack on the most vulnerable group of injured workers.

We are aware that the board has requested further comments from stakeholders. The deadline is a week Monday. We hope that these restrictions will ultimately be abandoned and some humanity actually shown to those suffering from chronic pain. Chronic pain will not go away, it will just go to another area. People who cannot work because of chronic pain cannot work, and they will end up on social assistance and in poverty.

Injured workers are victims of unsafe, often dangerous workplaces. When an injury occurs, that worker should be entitled to full, fair and timely compensation for the loss of income and the loss of enjoyment of life. Bill 99 does not provide that.

**The Vice-Chair (Mr Jerry J. Ouellette):** Thank you. That allows us just under two minutes per caucus for one quick question, beginning with the third party.

**Mr Bisson:** More in the form of a comment is that you, thank God, came here and gave us some examples of what happens to actual people, especially in cases of the issue of occupational stress. In my constituency office, and I imagine if constituents are going to see the Tory MPPs with their compensation problems, they are seeing the same kinds of problems, far too often we fail to recognize that no two people deal with stress the same way. If you limit the ability to have the board deal with the issue of stress in an adequate way, a lot of people in the end are not going to be able to get access to justice when it comes to that whole issue.

I can think of, just off the top of my head, about five or six different examples we've dealt with in the last year and a half, and I call tell the members of the government that it is not easy to get a claim accepted on the basis of occupational stress.

I've got one case where a worker was subjected to an accident where five workers died in a shaft, and the worker in question who survived wasn't able to return to the workplace. He had nightmares. Imagine seeing your best friends killed in an accident. Because of some circumstances that were involved in the accident, the board really had a difficult time in finally giving this guy justice so that he gets compensation: first of all that's he's able to get treatment and the treatment paid so he can deal with the post-traumatic stress, and second of all to allow him to get the time he needed to get his life in order after that accident and then return to the workplace some time later.

I say to the members of the government, through this presentation, you need to understand that if you limit access to compensation because of stress, you're really doing a disservice to a lot of people who in the end are going to get hurt by that action.

**Mr O'Toole:** Thank you very much for your presentation this morning. It's good to hear of real-case examples — that's what these hearings are about — and listening to worker decisions.

I just want to make sure I fully understood your impressions of the current proposed legislation. Andrew, in your presentation you referred to decision 227/95, a sexual harassment case, and Mr Bisson has just suggested that in a traumatic event in a mine where five people died, the worker who is affected by this would not be entitled. I would refer you to the proposed subsection 12(5). I'll read it for the record:

"A worker is entitled to benefits for mental stress that is an acute reaction to a sudden and unexpected traumatic event...."

So there is language to allow stress to be interpreted by the board. I'm sure in that kind of case, without being in a position to make the decision, that would be considered. So to say it's not allowed is misinforming, or perhaps you read it wrong.

*Interruption.*



**Mr O'Toole:** I just want to make sure he is aware of subsection 12(5).

I want to pursue a question with you, Doreen, and your particular case. Chronic pain is something we've heard a lot about. We heard from some medical practitioners, and when medical practitioners talk to us, they talk about return to work being a very important part: quick intervention and work accommodation.

I can refer you to a couple of sections in a report issued by Dr Murphy, who is a professor of medicine at Dalhousie University. This was not done for us, by the way. It's an independent professional medical opinion, and I'll read:

"Chronic pain often has no obvious, specific, underlying local pathological cause that can be identified or eradicated and does not respond to the usual treatments for acute pain and is associated with complex pathological behaviour and social factors."

A medical doctor, not me, has said it's very hard to trace specifically a chronic pain. As you said, Doreen, it does vary from patient to patient in response to injury and treatment course. There is, however, in the legislation a provision to deal with usual healing time, normal healing time, that 90% of the population would respond to this kind of treatment course. How do you respond to that, where we're trying to have a reasonable and fair —

*Interruption.*

**Mr O'Toole:** Reasonable and fair, that's what this is about — it's not to be unfair — for the employee and the employer. That's what it's about.

**Ms McPartlin:** It seems ludicrous. Chronic pain only comes into play after the normal healing time.

**Mr O'Toole:** And with age and other factors. That's what this report says.

**Ms McPartlin:** We could probably find you another thousand doctors who would disagree with that report in part, if not entirely.

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**Mr Bomé:** I have just one comment on that. I've read the bit from that doctor. It was quoted in Mr Jackson's commentary. I find it kind of curious that Mr Jackson and this government had to go to a doctor in Dalhousie to come up with an opinion that seems to support what you want to say. Here in Hamilton, Dr Eldon Tonks of the Chedoke-McMaster Hospitals is probably one of the world's leading authorities on chronic pain. You did not seek his opinion, and there are people like Ramon Evans, Dr Angela Maillis, out in Toronto; I've not seen what they have to say on this. I find it kind of curious that you found some doctor at the other end of the country when we have doctors here who may not have said what you want to say.

Second, with respect to your comments on my reading of 12(5), I did read 12(5) in preparing my cases. I won those cases. I've read not only 12(5), I read Mr Jackson's report on what chronic stress is. I have also read approximately 20 to 30 of the Workers' Compensation Appeals Tribunal cases on chronic occupational stress. I know what I argued in 277/95. That was not a case of sudden and unexpected mental stress, sir; that was a case where

this woman faced approximately two years of harassment at the board. Subsection 12(5) clearly eliminates that kind of disability from compensation.

The only case I have presented to you that may fit within the ambit of 12(5) is the last case, the case where the woman was sexually assaulted. Because of the words "acute reaction," my feeling is that may very well be interpreted that that will only cover the acute period of disability, not the permanent disability. I have read 12(5). I have considered 12(5). I do know what it says.

**Mr Agostino:** I want to follow up on that same section. One of the concerns in this that Andrew well outlined is the whole issue of stress as it relates to ongoing sexual harassment and the stress that causes. In my reading of this, and certainly from what I think has been said this morning, it's very clear that it makes it almost impossible for any woman to come forward with ongoing sexual harassment being a cause of stress, very disabling stress, causing severe difficulty for that individual. Sudden and unexpected: yes, an immediate sexual assault could be interpreted, while five or 10 or 15 years of ongoing sexual harassment would not be seen as sudden and unexpected, but would cause a hell of a lot of stress and mental stress and disabling stress for an individual in that situation.

What this would do is send a message to employers that: "It's okay to ignore it, it's okay to let it go on, because WCB won't treat it as a disability if it has an effect. It's not going to matter." I think that's a danger in all this, not only the punishment and the pain on the individual but the message it sends out with regard to the whole issue of sexual harassment.

**Mr O'Toole:** There are other ways.

**Mr Agostino:** I don't think I interrupted you. Andrew, would you agree with that? Does it make it impossible, with the section as written in this bill, for a woman who has been sexually harassed over the years to come forward with that as a claim? Would it almost eliminate it even from being considered?

**Mr Bomé:** There may be other legislation to deal with sexual harassment. There is the Human Rights Code. I'm not aware of what the Occupational Health and Safety Act has to say about this, but I do know that with 12(5) as written, any woman faced with constant sexual harassment at work will not be compensated for any disability she would suffer. Furthermore, it's questionable whether she would be able to sue for said disability.

**The Vice-Chair:** Thank you very much for your presentation.

**Mr Agostino:** Mr Chair, on a point of order: A gentleman in the audience suggested that a member of the government made a slur towards me. Can I get an apology from and a withdrawal from the member of the government who made that comment?

**The Vice-Chair:** I did not hear any comment, as I believe you yourself did not. I would ask the member, if such member did say something, if he would like to withdraw the comment. I'm not even sure which member.

**Mr Bisson:** On a related point of order, Chair: I know it's difficult for the government to sit through hearings

when their legislation is being criticized. It's difficult at best, and I understand that. I also understand that at times they feel somewhat sensitive about the comments being made by the audience. What disturbs me is that it's not the first time members of the government have called members in the opposition such names. I know it has been done to me on a number of occasions. My good friend Mr Spina has been known to indulge in that practice on a number of occasions. I think it is incumbent upon chairs of committees to try to deal with that as effectively as possible, because I don't think it serves any —

**The Vice-Chair:** Mr Bisson, should I hear any of those comments, I will make sure they are withdrawn.

**Mr Bisson:** Thank you very much.

#### MCQUESTEN LEGAL AND COMMUNITY SERVICES

**The Vice-Chair:** I now ask representatives from McQuesten Legal and Community Services to come forward, please.

**Ms Chris Austen:** Good morning. My name is Chris Austen. I'm a community legal worker with McQuesten Legal and Community Services. We are here to discuss Bill 99, an act to replace the Workers' Compensation Act with the Workplace Safety and Insurance Act. The title of my brief is Vocational Rehabilitation: Here Today, Gone Tomorrow.

McQuesten Legal and Community Services is a clinic under the legal aid plan and has been in existence since 1978. We represent low-income injured workers in Hamilton-Wentworth in appeals before all levels of the Workers' Compensation Board. My presentation, I hope, will show you the perspective of our region and the ramifications these changes could have on the injured workers who live in Hamilton-Wentworth.

Under the present Workers' Compensation Act, when a worker is injured and they have lost time from work, they are entitled to temporary total benefits while receiving active treatment. If a permanent impairment ensues, they receive non-economic loss award to recognize this. When they are physically fit to return to work, most injured workers do so. If they have a permanent injury and are unable to return to work, they are referred for vocational rehabilitation assistance.

The vocational rehabilitation assistance — the case worker, once a file is opened, can refer an injured worker for a functional abilities evaluation to establish their physical abilities; they can refer them for vocational assessments to establish their interests and abilities. Some workers go for formal schooling. Others go for upgrading. Some of my clients attend work-hardening programs to increase their stamina to return to work. Ultimately, most people involved in vocational rehabilitation do job searching with the goal of returning to suitable employment at or near their pre-accident wages.

Some employees or some injured workers are unable to locate a job which comes near their pre-accident wages. Therefore, they are entitled to a future economic loss to

recognize an earnings loss. Others are totally unable to ever return to any type of employment, and they receive 100% future economic loss. That's the way it is now.

Current vocational rehabilitation programs, as I'm sure you already are aware, are far from perfect and have a lot of flaws, but they're certainly better than what is anticipated and proposed in the new act. Section 40 of the act sets out the process to be followed by the employer and the worker to facilitate the injured worker's early return to physically suitable employment. The preparation and implementation of the labour market re-entry plans are up to the employer and injured worker. They are required to maintain communication during the recovery and ultimately identify and arrange for physically suitable employment which will, if possible, restore the injured worker's pre-injury earnings.

Although the legislation indicates that the board is to be kept updated on the injured worker's return to work, it appears that there will not be any hands-on approach or assistance by a vocational rehabilitation case worker. Thus it appears that the vocational rehabilitation assistance has been eliminated from the new act.

Elizabeth Witmer's media kit entitled Workers' Compensation Reform was issued in November 1996, and this makes a number of statements which I wish to address. The first is, "This act proposes to get injured workers back to work more safely and more quickly by requiring employers and workers to work cooperatively to achieve this goal."

#### 1130

This sure sounds good on paper, but the reality is that injured workers are often harassed into a return to work before they're physically fit and able to return to those jobs. Such an early return to work may and often does result in further, more serious injury, causes animosity between the workers and the employer, and additional costs result to the employer if the worker is unable to stay at the job and if they're injured further. That is a real cause for concern. It's a cause for concern by the workers because they're not fit to return to these jobs, and it should be a cause of concern by the employers because they're going to have to bear the brunt of the costs.

The next statement I wish to discuss is that the new act would be, and this is in quotes, "sensitive" to the needs of injured workers. What on earth does this mean? Currently, workers' compensation staff, the act and accident employers are seldom sensitive to the needs of any injured workers. Injured workers are often forced back to physically unsuitable employment without modification to the job site, and this often results in further injury. Will this new agency or will the employer be required to attend sensitivity training? I don't think so. I doubt it. The statement makes the act sound kind of touchy-feely, warm and fuzzy, but it is unlikely to have much substance or weight.

The next statement is that Mrs Witmer anticipates that "the system will refocus as an insurance plan for workplace illness and injury to pay benefits for injuries and illness caused by work." As we all know, insurance companies have a reputation for being insensitive to the needs



of injured individuals. They set unrealistic goals and use the fact that individuals are not able to achieve these goals as a reason for discontinuing benefits. This certainly bodes ill for all injured workers, as we anticipate that this is exactly what will happen under the new act.

The last statement I wish to address is that the act has a "goal of prevention of workplace illness and injury in the workers' compensation system." Will the new agency have staff in charge of instituting and monitoring employers' health and safety programs in order to prevent illness or injury? Many employers, especially those with unionized shops, have health and safety programs in place. There's a question of how good these programs actually are. After all, workers are still being injured at work, and we anticipate that even under this act workers will still be injured at work.

"The act will make Ontario workplaces among the safest in the world and turn the WCB into a leading-edge institution in the delivery of workplace insurance." This sounds like the impossible dream. We do not see that the implementation of the strategy will assist workers in a timely return to any suitable employment with the accident employer in a safe and timely manner. Many employers in Ontario ignore current health and safety legislation, and without frequent monitoring by government agencies such as this, we anticipate that this practice will continue.

In addition, to return to work the employer and employee must produce a labour market re-entry plan. How will these plans be implemented? With the implementation, will the injured workers be subject to the same unfeeling, uncaring type of individuals who are currently vocational rehabilitation case workers with the board?

We have another concern, and that is a concern for injured workers whose first language is not English and who are not physically capable of returning to heavy labour. There are quite a few of those types of injured workers in Ontario. These people often require extensive school or retraining to obtain physically suitable jobs. It's very difficult currently for these people to receive these services to which they are entitled, and under the new act these services may not be available at all. These people should not be relegated to the ranks of unemployed, nor should any injured worker. There should be a focused effort to assist all injured workers, whether through training or other means, to achieve successful return to work, to physically suitable positions at their pre-accident salary levels.

My other concern is the time limit for an objection for a decision relating to a return-to-work or a labour market re-entry plan. The act, as it is currently written, allows 30 days only for a person, after the initial decision detailing the issues and disputes and grounds, to submit an objection. These are called time-sensitive objections. The reality is that it's impossible for a person to make a well-thought-out objection within 30 days.

The first thing an injured worker must do to formulate an appeal is to obtain a copy of their access file. That's the file workers' comp keeps on every injured worker. This often takes six to eight weeks and sometimes longer.

That certainly is far outside the 30-day limit. Often these files are three to six inches thick and thorough review is essential, and it's a very lengthy process. Where an injured worker does not have or know of access to legal services, they may give up and not pursue their right of objecting to what they consider to be an unfair decision. This would be an injustice to all injured workers. This limitation date of 30 days is far too short. We would urge that this time frame be reviewed and changed to recognize the need to allow for the formulation of an appropriate objection.

In conclusion, we feel that there is no need to totally replace the current Workers' Compensation Act. There is need for change but there's no need to totally replace it. It appears that the new act will remove the injured worker's right to vocational rehabilitation. Although the vocational rehabilitation currently offered has many problems and leaves a lot to be desired, it's better than nothing at all, which is what injured workers will receive under the new act. According to the proposed legislation, absolutely nothing will be available for these injured workers under the new act, yet these people are most desperately in need of guidance and assistance in the form of appropriate vocational rehabilitation to return to physically suitable employment.

We urge you to rewrite this act. We urge you to develop a fair and equitable vocational rehabilitation system which will allow injured workers to return to physically suitable employment. We urge you to provide proactive, pleasant staff to assist and guide injured workers back to employment and to extend the limitation date to allow an injured worker the appropriate time to make a proper appeal.

Please keep in mind that these workers didn't ask to be injured. Overcoming a debilitating injury is tough enough. Assistance to successfully return to physically suitable employment is essential, both physically and mentally, to injured workers. Please do not eliminate the vocational rehabilitation assistance to injured workers.

**The Vice-Chair:** That allows us two minutes per caucus. We'll begin with government side.

**Mr Hastings:** Ms Austen, how many cases did your agency have in 1995 and 1996, approximately, dealing with WCB?

**Ms Austen:** Active WCB cases? Workers' compensation is about 55% of our caseload. I don't actually see the numbers very often because I don't work on the numbers side, but I would say a quick calculation is about 250 open files at a time.

**Mr Hastings:** In 1995 and 1996?

**Ms Austen:** Each year, yes, and often workers' compensation cases are so involved that they last four to five to six years.

**Mr Hastings:** Is your primary role at this agency dealing with appeals of compensation issues or with vocational rehabilitation restoration, where it has been terminated?

**Ms Austen:** I have specialized in vocational rehabilitation since I started there in 1986, but I work with all types of workers' compensation cases.

**Mr Hastings:** Of the voc rehab cases you've had, how many successful returns to work have you had, either through appeal or through negotiation with the employers, if you didn't have to go that route?

**Ms Austen:** I don't have those numbers with me.

**Mr Hastings:** Ten, 15, just an approximation, if you can think of it.

**Ms Austen:** In two years?

**Mr Hastings:** Yes.

**Ms Austen:** Some of my clients are currently involved in schooling, so they haven't entered the workforce. We consider that a success also, where we're successful in getting them in schooling or work-hardening programs. A number have jobs. I would say five to 10, probably, over two years, but you have to remember a lot of this process is after the appeals levels are reached and vocational rehabilitation is allowed.

**The Vice-Chair:** Thank you, Mr Hastings. We have to move to the official opposition.

1140

**Mr Patten:** Thank you very much for your presentation. I thought it was very pointed. I would concur with your analysis somewhat.

I'll come back to the vocational rehabilitation because I think that is a big area that will be undercut. Just to underline your term, it seems strange to have a sentence in there that says "being sensitive to the needs of the injured workers," when the whole plan should be a workers' compensation program, not an insurance program that is based on trying to save money and not provide fair services.

You suggested that maybe there should be some requirement — or will there be a requirement for sensitivity training? That's not a bad idea. Maybe that should be included for everyone.

You refer to Mrs Witmer's comments on the workplace insurance, that it would be a leading-edge institution in the delivery of workplace insurance. The worry I have is that insurance doesn't necessarily mean that is the fairest and best situation for the people who are injured. So the criteria become a different set of criteria on that.

**Ms Austen:** Another word for insurance is to insure, I suppose. I don't like the use of the word "insurance" either. As I mention in my brief, nobody asked the injured. Surely these individuals have a right to be treated fairly and equitably and to return to suitable employment. Nobody wants to sit at home. I have more clients who go into depression after they have been poorly treated by case workers at workers' comp. This is very common. I have more clients who go into severe depression. I have clients who have been to case workers and then they come and see me and we go together. I go with my clients to workers' comp. I go with them to vocational rehabilitation meetings. Then they look at me and say: "I can't believe how nice she was. You should have seen her last week.

She was just awful to me." This shouldn't be happening. These people don't deserve that.

**Mr Christopherson:** Thank you very much for your presentation, Chris. It was excellent, as always. I want to draw attention to your reflection that the government states that their goal is the prevention of workplace illness and injury in the workers' compensation system. The minister stands up and says nice words, and so does her parliamentary assistant here, but the reality is that they've killed the Occupational Disease Panel, which helps determine that there are causal links between disease and illness in the workplace and what is happening to people. In terms of the representation that workers had, 50% of the board is gone. They fired all the employee representatives. The Workplace Health and Safety Agency is dead — gone. That was put out there to specifically deal with the need to prevent injury and illness in the workplace. So everything we've seen so far shows the government going in the opposite direction.

Other than the one minor reference in the preamble, are you aware of anything in Bill 99 that concretely will create a safer workplace for workers?

**Ms Austen:** Unfortunately I'm not. I fear for people in the workplace. I fear they won't get treated fairly or properly under this bill. I fear a lot of accidents initially will not be recognized. You have to realize that workers' compensation currently doesn't go out of its way to get proper medical reporting on injured workers. It's up to representatives like us. We're non-profit. Our clients end up with bills to pay for the medical reports we obtain on their behalf. These are expenses that should not be put on the worker, yet these workers have to try to find some way to pay these people back. With workers' compensation not getting medical reports now, it's a real problem. It's going to become even worse because they will feel the requirement isn't there to pursue the injuries, to pursue the reasons for the injuries and ongoing disability.

**The Vice-Chair:** Thank you very much for your presentation. That concludes our time with you.

#### UNIVERSITY OF GUELPH

**The Vice-Chair:** We will now call on Grant Sharp from the University of Guelph.

**Mr Grant Sharp:** I had about five minutes to prepare because I'm a fill-in.

**The Vice-Chair:** Yes, there was a cancellation. The chamber of commerce cancelled.

**Mr Christopherson:** It can only be an improvement.

**Mr Sharp:** I'm not here to support one side or another. I'm here to support what works and what is fair. I feel the job ahead for the WCB is not an easy one. If the system is currently not working for workers and employers, then what is the answer? The answer lies in cooperation between doctors, workers and employers; no more royal commissions. We all know the answers.

Please make the system into a workable system. Let's keep it simple. Tell employers that if they have a bad accident frequency or severity, to shape up.



Please tie the Occupational Health and Safety Act and its regulations to the WCB to ensure safe workplaces. This is the bottom line.

Please ensure compliance of reporting of incidents so that we have accurate information on what is happening in workplaces.

Please ensure that employers have meaningful modified work.

The appeal system takes too long and is unfair. Please implement some sort of mediation process.

In summary, please ensure safe work environments for all workers. Please simplify this very complicated system so that people are treated fairly and compensated fairly, and please make the process easy to understand. That's all.

**The Vice-Chair:** You've left approximately six minutes per caucus, and we begin with the official opposition.

**Mr Patten:** Thank you, Mr Sharp. Could you give us a little bit of your own background in terms of dealing with the WCB?

**Mr Sharp:** I was formerly an employee of the board. I worked there for six and a half years. I felt in my heart that there were a lot of injustices to workers and employers. The opportunity came up that I was able to leave, so that was good. Now I'm in a work environment in which we try not to go to an appeal system. We try to make sure that we sit around the table, whether the board is there or not, to figure out what is fair, what the individual — let's face it, that is what it's all about here — would like and try to work through it.

**Mr Patten:** Have you had a chance to peruse the bill at all?

**Mr Sharp:** Yes.

**Mr Patten:** The issue we've been struggling with somewhat is trying to find a better alternative than what is in the bill on compliance of filing, because we've had testimony that that is a difficulty in many circumstances. You have heard perhaps the construction industry and the trades bodies talk about the difficulty of that, moving to multiple employers and different sites and things of that nature. From your experience, do you have any suggestions along those lines as to how the filing can be done in instances where it's justifiable?

**Mr Sharp:** There were proposals on the table to have yet another claim type of system and have a no-pay claim for employers that are large enough that they can pay the individual while the person is off and implement their own return to work. Really what it comes down to is an internal responsibility system. That is the bottom line. Maybe I'm not addressing your question directly, but indirectly, I think employers have to take on the responsibility themselves. The legislation has to support that. The influence of politics within the WCB has always been there. Maybe that is part of the problem. It's always there.

1150

**Mr Patten:** Could you elaborate on that? What do you mean by "Politics enters into it"?

**Mr Sharp:** Changes in government. Through my history at the board everything was new, and that was be-

cause there was a different flag being waved from a different political party. We're up to four acts now that are running simultaneously, with different policies in each. It is hard to deal with that. How can one decide on one thing or another considering four different types of legislation and four of them pulled in politically different ways?

There are maybe no answers for a lot of these, but my whole point is that the emphasis of the legislation should be in the incident report and should be the responsibility of the employer to report those to an external body. Whether you make that an audit process or whether you make that a simple statement in legislation, I think that's the whole point. You have to drive the internal responsibility system of each employer to take the responsibility for their own people.

**Mr Patten:** I agree.

**Mr Agostino:** I'll just follow up with a couple of questions. You know the system fairly well. Do you not believe, though, that the current system for filing a claim, where it can be triggered by a medical report, an employer's report or a worker's, the way it is now, allows for checks and balances and works fairly well because it makes sure it gets reported but doesn't put the onus simply on the worker under any circumstances to do that? It gives some flexibility and allows people who have some expertise in doing that kind of thing to do that. Do you see that system working fairly well as it now stands in regard to the initial opening of the file?

**Mr Sharp:** I think the new legislation is going to force companies not to report. You've got to be really careful in the approach you take. Yes, the current system is fine and things are being reported to the board, but now we are talking about volumes, we're talking about the front-line people who are handling these situations. Should it be a sticker process where it just comes in and it just goes into a big pile? Maybe.

You have an actual individual who looks at a no-loss-time claim, the one you're referring to about the medical aid. You have an actual process. A person decides yes or no. Why can't they be done at the employer end? There are questions about universal systems and things that have been dealt with a lot. Maybe you just do not have the emphasis in the legislation to say, "You have to report one, two, three, four; these are what the requirements are and you just have to do it." Again I'm getting back to the audit system.

**Mr Bisson:** I have a couple of comments before we actually get to the question. You made two comments in response here that I need to touch on. In one of them you talked about how the whole process is politicized. Well, it is. First of all, we have to understand that you have two people with competing interests: the injured worker and the employer. The employers do not want to pay the assessment; they are trying to save money to maximize their profits, and we understand that. We're all individuals and we want more money in our homes or in our businesses. That's perfectly natural.

You have the employers on the one side trying to save the bucks, so they don't want to pay the assessment or the claim, and on the other hand you have the worker who is trying to get workers' compensation benefits for what he or she feels is an accident caused in the workplace. How you get everybody to come into a group hug in that situation is beyond me. You never will. I think we need to accept the premise that you have two client groups or two players in the workers' compensation system who have very different interests.

When we talk about, "We have to unpoliticize it," let's not kid ourselves. There are very different needs or very different wants and we need to deal with those, and that is what the Workers' Compensation Act — the board try to do the best they can. It's not a perfect system, I don't argue it is, but I think it has worked fairly well to a certain extent.

We make the blanket comment that the system is totally in disarray and doesn't work. Listen, I've been working around compensation issues for the better part of 15 years. Most claims don't go to an appeal. Most claims don't go to adjudication. Let's not kid ourselves. A lot of the claims are dealt with. There's an injury; a report is filed. The doctor, the employer or the injured worker files a claim, the darned thing is accepted and eventually the worker ends up back at work or ends up on total temporary disability or on pension.

Some claims, and the ones we're talking about here, are the more complex ones, which are the minority claims. That is where the problem lies. How do you deal with those issues when they're complex? How do you deal with an issue of an injury where there might have been a motor vehicle accident in the past? Or it may happen to be a back injury in an incident at work, but the surveillance company for the WCB took a picture of the person lifting a boat. Which one caused the accident? Which one caused the injury? It's probably a combination of all three.

There is failing in the system. I would much rather see us move away from a compensation system as we know it and move to comprehensive disability and say: "To hell with where the accident happened. I don't care if it happened at home, at work or on the moon. I don't care. The point is, the person is hurt and needs help." We shouldn't look at it from trying to assess blame at the compensation board, the insurance company, the employer's sickness plan, and the more quickly we come to that realization, the more money employers will save and the better employees will be treated. That is what the royal commission on WCB was trying to do: to move away from the system we have where we're always trying to assess blame on one end or another. We can save bucks for employers if we look at it as a comprehensive system of sickness and accident. We can also make it fairer for the workers if we don't have to deal with those complex issues and make the system a hell of a lot easier.

To the question of "fair" — you talk about what is fair within the compensation system — I have to ask you this question: This legislation that we have before us says the widows of workers who have died because of an industrial

disease like silicosis will no longer be entitled to survivors' benefits. Is that fair?

**Mr Sharp:** No.

**Mr Bisson:** Is a system where benefits to employees are being cut from 90% to 85% fair? Is this legislation fair to those workers?

**Mr Sharp:** As far as being fair, fair is in the eye of the beholder.

**Mr Bisson:** Ah, that is the point, right?

**Mr Sharp:** That is the point.

**Mr Bisson:** That is what I'm trying to say here. The system is politicized —

*Interruption.*

**Mr Bisson:** Exactly. It's a question of trying to deal with what the facts are.

*Interruption.*

**The Vice-Chair:** Order, please.

**Mr Bisson:** Thank you. The point I'm trying to make here is that when we make these blanket comments, I think we need to come to terms with what the problem is. The problem is that you have a person who is injured and needs compensation, and we need to figure out how to do that. I don't think this legislation is going to address that adequately. In fact, I think we are going backwards.

From the employer's perspective, we need to figure out a way to distribute the costs so that they are able to find a way to maximize their profits in the end. If we go in this direction, all we're going to achieve is a reduction in cost for employers and no justice for workers. That is what this is all about.

**Mr Sharp:** The folks who hired me decided to give me a nice, long title and they called it —

**Mr Bisson:** No salary, just title.

**Mr Sharp:** They called it WCB-LDT loss control officer. Isn't that funny, when you're saying the marriage of two? We are trying to handle individuals and their requirements and trying to be fair. Again I come back to that: What is fair? That is for you guys to decide.

**Mr Hastings:** Mr Sharp, did you have any other position at the WCB while you worked there aside from LTD loss control clerk?

**Mr Sharp:** My position at the board was not that. I was an adjudicator.

**Mr Hastings:** You were only an adjudicator while you were there?

**Mr Sharp:** Correct.

**Mr Hastings:** Would you be prepared to go away from here and bring back to the committee in a written form your comments or thoughts on the following subject: the state of labour relations and employee-employer relations with the board as you knew them when you left?

**Mr Sharp:** In other words, "Don't think of them as an employer any more"?

1200

**Mr Hastings:** I said "employer" and "employee" because you had both unionized and non-unionized, and there was probably a different *modus operandi* at work in the way in which folks were treated.



**Mr Sharp:** I can leave you my card and you can write exactly what you want responses to.

**Mr Hastings:** Okay. My second item would be your thinking about whether mandatory reinstatement after 1985 was helpful or a hindrance to both injured workers and the employer in getting people back to work.

Third, M. Bisson made the statement that this system is adversarial and by its very nature political. Thereby it would be interesting to hear from you, either verbally or in writing, what your thoughts would be as to whether the Occupational Disease Panel, when it originated, or especially into the mid-1980s and late 1980s, made its decisions on the acceptance of the various types of cancer claims purely on scientific and so-called objective criteria or whether there is a very strong possibility that some of those decisions may have been made with that but also accompanied by a politically charged atmosphere. I'd be interested to hear our comments on that.

**Mr Christopherson:** Dead bodies will do that.

**Mr Hastings:** That's evident in the literature, if you go back and look at how disease decisions were made in the mid-1970s, particularly with respect to laryngeal cancer.

Finally, I'd like to know what your thinking would be in terms of —

**Mr Bisson:** The dead bodies were faking, right?

**Mr Hastings:** I don't think I made any comments, M. Bisson, while you were talking.

**Mr Bisson:** I apologize. You're 100% right. I should not have made that comment.

**Mr Hastings:** We had a gentleman in Windsor by the name of David Law who at the time had been a lawyer with the WCB for six years. He strongly advocated that in terms of new policy development, whether under this bill or any other bill in terms of decisions made, policy decisions developed, there ought to be some sort of outside policy development approach so that the very nature of arbitrary decision-making could be substantially reduced inside the WCB even as it is constituted today.

Your comments on any of those or in writing; I'd be very interesting in getting your views because I think your views probably would be reflective, deliberative and very fair in terms of how you would see it. You'd look at the issues in terms of the nature of the issues instead of a personality-driven consideration.

**Mr Sharp:** I'll try.

**Mr Hastings:** Your thoughts on any of those, Mr Sharp.

**Mr Sharp:** You've covered a lot of ground. I think that agencies, particularly the Occupational Disease Panel — that sort of panel is looking towards the future and looking at occupational things that are related in work environments that we may not know about yet. We have lots of doctors at our university who still — latex gloves, huge issue. But are they willing to stake their 10, 20 years of research and give that up to be retrained to be something else? It's tough.

That panel shouldn't disappear. That is addressing a little bit of it. But that's exactly your point: You can't ignore what may happen in the future and you just can't

eliminate those unforeseen — who would know that brown lung and things like that are around unless you have time that goes by and people who are affected?

Should employers pay for that? I don't know. Should society pay for it? Are we going to go into a New Zealand system that is universal coverage? They didn't do so well.

**Mr Bisson:** But others have.

**Mr Sharp:** Others have. It's a tough debate.

**Mr Maves:** You talked about your new position at Guelph. You've got a return-to-work program. How did you achieve cooperation between the two parties?

**Mr Sharp:** You sit down and you talk.

**Mr Maves:** Is there an onus on both parties to do that?

**Mr Sharp:** Yes: "Sit down and talk face to face and work it out."

**Mr Maves:** How do you assess a person's functional abilities and what they'll be able to do when they come back to work?

**Mr Sharp:** I'll give you an example. One particular case we have right now is an individual who is indicating that she is having a really hard time with her return to work. She's been off for quite a bit of time, almost eight months, for a back injury. There are no physical findings, the CAT scan is negative, everything's negative.

The compensation board decided to send her to the regional evaluation centre. The report came back with a lot of physical findings and a lot of limitations. That didn't go over so well because in the history of the claim it doesn't have the information to support that. The adjudicator — and if I were there at that time, I'd probably make the same call because of the policies and say, "The limitations aren't what they say at all at the regional evaluation centre; they're only this." Now I represent an employer, and I sit down and the worker says, "The regional evaluation centre that I went to" — people perceive it as just the board. "The board is sending me to this place, and they say I can't do this and this and this". Now our union medical adviser, an adviser to the compensation adjudicator, says, "No, it's just this one thing." Who is being fair in that?

**Mr Maves:** How do you handle that?

**Mr Sharp:** My whole response was: "Let's go the middle ground here. How long can you stand, how long can you sit, how long can you do this, how long can you do that? Let's match the duties to the regional evaluation centre report. Let's forget about what the board said as far as just the no-heavy-lifting type of scenario." That way you have the cooperation of the individual. The board doesn't care. The person is back to work. I'm happy because the person is back to work and doing meaningful work. That's the other point too: meaningful work. You can't be playing cards; you've got to be back to work doing something meaningful. It's hard enough going through an injury, let alone coming back to work after X number of months of being away, your co-workers and things like that — so accommodating the situation as you see it, being fair.

**The Vice-Chair:** Thank you, Mr Sharp, for your presentation. We appreciate your coming forward.

We would now call the representative from the Labourers' International Union of North America, Local 837, if you could come forward and identify yourself for Hansard, please. Mr Bathos? Is there a representative from the labourers' union, Local 837? No. I believe we'll recess the committee hearings until 1330 this afternoon.

*The committee recessed from 1209 to 1330.*

## WORK RETURN INC

**The Chair:** We welcome our first presenters this afternoon, representatives from Work Return Inc. Please introduce yourselves for the Hansard record, and you have 20 minutes.

**Mr Carlo Colacci:** Carlo Colacci and John Sheard, who's president of Work Return Inc.

I would like to thank you all for inviting me here today.

I believe strongly, after careful examination of the proposed Bill 99 and the Hansard reports to date, that I represent solutions. I am hopeful you will agree. I have looked over the list of speakers presenting before you and I must say I am very impressed. I can't help but notice that ours is one of a few private companies and the only private disability management company that has taken the time to come to see you. Again we thank you.

Our company, Work Return Inc, is a private sector disability management and return-to-work service provider employing vocational experts, occupational therapists, functional ability evaluators, psychologists, and case managers.

The core values of our company are as follows, and you may refer to the inset of the brochure before you. It's right in the inside part:

"Work is the central theme of our society and our lives. Work is a way of life and it is the right, if not the responsibility of every person to be engaged in it. At Work Return Inc we believe that all members of Canadian society should be performing productive work, contributing importantly to the economy and their families."

It is disturbing to note that to date there has been much debate about the proposed act. There are obvious areas of contention that need to be clarified. In my dealings with the Ministry of Labour it has been confirmed that there will be a role for private sector providers of case management or return-to-work services and labour market re-entry planning, as referred to in the new act.

Bill 99 falls short, however, when it comes to clearly indicating where private sector vendors fit, nor does it entrench in law a role for private providers of return-to-work services. It is clear that the responsibility for the return-to-work process lies with the employer, to be coordinated with the worker. If this process fails, then the Workplace Safety and Insurance Board will act as a mediator and provide options. It is at this crucial point that there is a role for a third-party objective facilitator of the return-to-work process. After a work trial has been attempted and failed it is at this stage where reconciliation is difficult, as to some degree the blood has been spoiled and

someone, a third party who is an expert, can go in and fix the problem, objectively.

For a mere 5% discount on premium to employers in Ontario, it is required that they carry out the professional responsibilities of the former vocational rehabilitation services department of the WCB, which has been eliminated. Although assistance to employers and workers in this regard is assured, there are no guarantees, nor a process with guidelines.

In fact the proposed Bill 99 includes in part IV under "Health Care," "Entitlement to health care." In part V, which is the "Return to Work" section, there is no entitlement for return to work. Why? Is return to work not the thrust of this legislation? Because it isn't recognized in the act, as it is written currently. It is important in this act to recognize when it will be necessary to employ the appropriate services, as it relates to return to work.

In Bill 59, the auto insurance act, which I'm sure you're familiar with, case management along with other vocational and rehabilitation services are guaranteed. As you know, these are return-to-work services. However, in Bill 99 there are no guarantees. For consistency in law-making, it would be obvious that Bill 99 include some guarantee of return-to-work services. There is no such mention in the benefits section of the act. Furthermore, to remain consistent, the government should consider the position of the Ministry of Community and Social Services. To quote the minister with respect to the Ontario disability support program:

"What people want is practical pre-employment and on-the-job supports that would help them enter the labour force for the first time or re-enter it when their situation changes." The quote goes on, "People want to be able to choose the services for themselves, rather than being told what they need."

This new legislation, which replaces the Vocational Rehabilitation Services Act, includes guarantees of the following services: employment planning assistance; interpreters; technological aids and devices; skills development and ongoing job supports. These guarantees don't exist in Bill 99.

You may be interested in knowing that the Canada pension plan has begun a rather large program of return-to-work and disability case management strategies with its 300,000 recipient population. Research and data collection last year produced the report entitled Evaluation of the National Vocational Rehabilitation Project. A conclusion of that report was that vocational rehabilitation works and, if effectively implemented, can indeed be a cost-control mechanism.

By providing return-to-work services, the evidence suggests the project was successful in returning a significant number of Canada pension plan disability beneficiaries to regular employment with the use of private sector, case management services. It is clear, ladies and gentlemen, that the evidence is in place and there is no need to reinvent the wheel.

What I don't understand is why, in a workers' compensation system, equal guarantees are not in place, and quite



frankly I don't understand where the unions are on this obvious benefit.

One of the key concepts of this act is to adopt the principles of insurance. It is the insurance industry which currently refers to work return when in need of professional objective services. As with any product or service imaginable, it is important that the worker has a say in who will participate in their rehabilitation and life planning. Similarly, the employer has the right to ensure their premium dollar or other funds are spent on a return-to-work service provider of choice.

It is this concept that will ensure the buy-in of all parties and see to fairness and objectivity in achieving return to work. This concept is not dissimilar to that of mediation and by its implementation an awful lot of unnecessary litigation can be avoided. Every case is unique and this has been part of the problem with some of the inconsistencies with the Workers' Compensation Appeals Tribunal process. There is an opportunity with a third-party, return-to-work expert to build consensus and resolve the problem before the issue perpetuates with no resolve. That is not to say there is no room for an appeals process in necessary circumstances.

The vocational rehabilitation services department, which employs some 400 vocational rehabilitationists at the board, maintains highly skilled individuals expert in their field. The elimination of the VR department has caused concern for case workers and related specialists, as it appears there is no role for them, no jobs. I can assure you that over the course of the last five to 10 years, I have seen former WCB voc rehab professionals effectively integrate into the private sector rehab industry and insurance industry, where they are importantly contributing their talents and providing solutions to a lot of problems. It would be a waste to see these skills unutilized and I would be more than happy to provide employment to this group, as long as there would be a guaranteed role for private sector voc rehab and disability management consultants.

The current act does not include a role for case management; however, it has been mentioned that the new board will hire approximately 300 nurse case managers. I question how this newly created position, which I would imagine will concentrate on medical case management, will make a difference, not to mention that many workers have files and case histories that date back many years. I anticipate this transition will cause much turmoil as consistency of service to workers and employers will be tremendously affected.

I understand that the emphasis of the Workplace Safety and Insurance Board would be more oriented towards a role of adjudication. However, by including the role of nurse case manager, the objectivity here becomes questionable, and with the emphasis on cost-cutting initiatives, is not the role of nurse case manager in potential conflict of interest? The case management or disability management concept is not new; it works and has become a hot topic. However, if this principle is not appropriately employed, we risk failure once again.

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Many organizations that support business and labour have clearly stated that they wish to see the new board as having a directive role only, to ensure the rights of all stakeholders. As I alluded to earlier, what is necessary is guidelines for when return-to-work and/or private sector service providers come into the picture. The simple reason for this is because the following is required, which I refer to as guiding principles:

(1) The first one would be a role and purpose definition. It is important to distinguish why and what services the private provider will carry out in contrast to the board and their collective responsibilities.

(2) Consumer choice, employer: As the employer is the ultimate payor, this consumer should have the choice to select and buy the professional service it wants.

(3) Consumer choice for the worker: The interaction of the board and other parties in the rehabilitation of the injured worker directly affects the worker's life, and therefore it should be the worker's decision who will participate in his or her life and vocational planning. As indicated earlier, the government already supports this concept at the Ministry of Community and Social Services, but not at the Ministry of Labour, not as it relates to Bill 99.

(4) Utilization guidelines: Some employer groups view Bill 99 as offering fewer services, such as vocational rehabilitation, for the same premium. It is important to examine the criteria for which either the employer or worker receives assistance from the private sector and the reasons why services are made available.

(5) Finally, outcome data: Success cannot be measured if it is not known what is being measured. Without a clear statement of purpose and role, the relationship with the private rehabilitation and return-to-work service providers will be precarious and uncertain.

The current proposed legislation includes a return-to-work process in section 5. However, it must go on to entrench private sector providers of return-to-work services and clearly indicate what the role of private providers will be in contrast to that of the board.

There are no guidelines or service provision for those workers requiring labour market re-entry support because they may have sustained injury that will not permit them to return to their former occupation. For the employer there is concern here that there is no provision of service and that experience rating will be adversely affected and, similarly, who will the worker turn to with the elimination of the voc rehab department? The question is not answered in the act, but this issue will cause many problems that can be avoided if guidelines and goal-oriented vocational rehabilitation planning does not occur.

As I indicated at the outset, at Work Return we believe work is not only a way of life but a right. It is important in Bill 99 that there is an entitlement for return to work and services related to return to work in section 5 to protect workers and to ensure these changes to the act succeed. You must ensure these changes are not just operational but strategic. This bill must recognize and entrench in the act

a role for private vendors of return-to-work services, which is supported by a number of organizations that have presented to you, including unions and the employer community.

**The Chair:** Thank you very much. We'll begin with the third party, please.

**Mr Christopherson:** It's unfortunate that it's not the government members first. In all sincerity, I would appreciate hearing from the parliamentary assistant some of the answers to the questions you've raised about how far they plan to entrench it, who indeed will pay for it, who will guide its development, who has to buy in, who doesn't. Without that information it's difficult for me to proceed, Chair. I seek your guidance. It's the first time we've really gotten into this much detail about this particular issue. Perhaps with your indulgence I could ask the parliamentary assistant to maybe provide some of those answers.

**Mr Maves:** I've got my own set of questions that I'd like to ask.

**The Chair:** My thought is that because the time is so short, perhaps we could do our normal round of questions and maybe there's something you might want to ask for at the end of the questioning round. How would that be?

**Mr Christopherson:** Fair enough. I would ask the PA to bear those questions in mind in addition to asking his own.

My question then to the presenter: I can't speak for the unions, but I can say to you that some of the concerns we have, and I think they share them, are directly related to page 7, number 2, when you say, "Consumer Choice, Employer: As the employer is the ultimate payor, this consumer should have the choice to select and buy the professional service it wants." I note in number 3 you also say, "Therefore it should be the worker's decision who will participate." So I'm not sure which one you mean or whether you're expecting they'll both work together.

**Mr Colacci:** As I indicated, after mediation fails it goes to the board. The board decides what has to be done. At that point, this is not dissimilar to the process of mediation where both the employer and the worker agree that some third-party objective service provider of this kind of stuff gets involved and takes care of the problem.

**Mr Christopherson:** Currently they can do that themselves. What would the benefit be to farming it out?

**Mr Colacci:** First of all, it's failed at that point, so as I indicated somehow something went wrong; the blood's been spoiled, so —

**Mr Christopherson:** What suddenly makes it magically wonderful just because it's in the private sector?

**Mr Colacci:** Because of our expertise.

**Mr Christopherson:** You just admitted in your brief that the people at the ministry are experts too; in fact you draw on a lot of them and you'd like to hire them.

**Mr Colacci:** Absolutely.

**Mr Christopherson:** I don't understand how, just because it's the private sector, it's magically better.

**Mr Colacci:** It's for our objectivity.

**Mr Christopherson:** But objectively, in number 2 you've said the consumer's doing the paying, and as I

mentioned to an earlier presenter, there's always the risk when someone's paying about the old saying, "He who pays the piper calls the tune."

**Mr Colacci:** I understand that point, but that's not yet established, nor is that a fait accompli, so we have to see exactly who's going to be paying. I raised those issues in the presentation as well: Who's going to pay? Who's going to do it? Is it going to be the board? Is it going to be private service providers? There has to be a clear distinction there for that to be effective, and I think that's where it will be effective, when those distinctions are clearly made.

**Mr Maves:** A quick one: How many companies like yours are out there right now?

**Mr Colacci:** I'd venture a guess at about 100 or so.

**Mr Maves:** What's your record of success, putting people back in their —

**Mr Colacci:** What do you mean by "success"?

**Mr Maves:** Helping people get back into the work world.

**Mr Colacci:** We have arrangements with a lot of organizations, the employer community, that have taken people on work trials and that's led to employment. So it does work.

**Mr Maves:** Is it a better record of success than vocational rehab at the board? You would say yes.

**Mr Colacci:** I can't compare it, but —

**Mr Maves:** In subsection 42(7), on the LMR plan it says, "The board shall pay for, and the worker shall be required to take, such steps as the plan provides for the purpose of enabling the worker to re-enter the labour market." Doesn't that answer your question of who shall pay for those types of services?

**Mr Colacci:** There are no guidelines and distinctions on who qualifies and for what reason. Why is it that someone gets service and someone else doesn't get service? There are no distinguishing guidelines.

**Mr Maves:** Could you really write guidelines like that, though, in a piece of legislation, or is that not more operational?

**Mr Colacci:** I think it can write some kind of criteria that are deserving of service. That's where it goes wrong, because you get people who don't get service, people who do get service. There are inconsistencies and that's where the problems are: How come he got, he didn't get?

**Mr Patten:** Bart, could you read that last section again, please? It's 42(7).

**Mr Maves:** "The board shall pay for, and the worker shall be required to take, such steps as the plan provides for the purpose of enabling the worker to re-enter the labour market."

**Mr Patten:** If that holds up, then it says the board will pay for those services. If on the other hand, as you suggest, it's the employer, then there may be some difficulties or there may be a bias with an employer in terms of choosing which particular facility they may want to have. We'll leave that for a moment.



1350

What I would like to say is that I appreciate your identifying this whole area because there are a lot of questions in the return-to-work area and the clarity within the legislation. There's no question. The registered nurses were here – was it yesterday? They're queasy about that, the shifting role they have to play, and what is the balance? These are medical practitioners and now all of a sudden, they're case managers. What does that mean? What is the role they have? What's the expertise they bring? Do they need extra training? It's all those kinds of things.

**Mr Colacci:** It's a potential conflict-of-interest role for them when there are cost-cutting initiatives being implemented, for obvious reasons, because the system is in trouble, yet at the same time they have to carry out objectivity in deciding over a worker's life. But what I want to draw to your attention is why there is entitlement to health care in section 4 and no entitlement in section 5 to return to work. Can I ask why there's no entitlement for return to work?

**The Chair:** Mr Patten, any further questions? Just briefly.

**Mr Patten:** He has to answer the question, I guess.

**Mr Bisson:** I think the parliamentary assistant ought to.

**The Chair:** Order, please. It's Mr Patten's questioning period.

**Mr Patten:** I'll give up my time. It's a crucial question. If Bart wants to answer that, I'd be happy to hear the answer.

**The Chair:** Excuse me, the time has expired. If Mr Maves wants to respond, but it's not necessary.

**Mr Maves:** It's the same employer obligation as in the current act.

**Mr Colacci:** You give the right to health care, but you don't give the worker the right to have the chance to get back to work.

**Mr Maves:** There's the employer obligation, which was under the previous act and which is still here, and there's also a return-to-work obligation on the employer to begin discussing right away, as soon as possible, with the employee about return to work, which is an obligation that doesn't exist now.

**Mr Colacci:** I don't think you're emphasizing the importance of it, as you do health care.

**Mr Maves:** Fair enough.

**The Chair:** Gentlemen, thank you very much for coming before the committee this afternoon.

**Mr Hastings:** Madam Chair, I'd like to make a request of the legislative clerk. This whole area of return to work is like trying to bottle a cloud. I think we're all having a struggle trying to get some reliable statistical information from this whole industry, such as the Canadian Association of Rehabilitation Professionals. I would like to ask Mr Colacci if he could submit some material to the legislative clerk which would show what the success ratio is of his firm or other firms in this industry in comparison to the public sector. We're not getting much in the way of answers from deputants who come and say that vocational

rehabilitation in its present context is working fairly effectively, and I'm saying to myself, "Where's the evidence?"

Even Mr Colacci has made the point that it's work trials, not work opportunities, actual jobs. That's what I'm interested in. How do you measure your success rate ratio, not just counselling or return to training? That's a success partially to getting there. That whole area is something I'd like to see the legislative clerk take a look at to see if we can get some background material on this particular subject from those perspectives.

**Mr Colacci:** I'm not talking about counselling. I want to make a distinction. The legislation says return-to-work services. That's what I'm talking about, and I specifically wrote this and presented it the way the bill and the thrust of the bill was oriented.

**The Chair:** Thank you, Mr Colacci. The legislative researcher is taking careful notes and may want to contact you further.

**Mr Christopherson:** Further to the issues Mr Hastings has raised with regard to the legislative researcher, I think that would be helpful to get statistical analysis of what the success rates are coming out of the WCB, and are there other things in the private sector? I have a hunch that the world isn't perfect just because it's in the private sector, but let's take a look and see what comes up.

But what I would further ask, since the process doesn't seem to allow me to get to the parliamentary assistant, is that the researcher also bring forward whatever documentation or information she can find from the ministry and the minister about what they're going to do with regard to 42. There are a lot of questions here, and we don't have the answers. If she would gather everything that is available, then if there's still a gap in our knowledge base, I will be seeking some opportunity during these hearings to put those questions to the parliamentary assistant so we can get some answer.

**The Chair:** Thank you. Duly noted.

## HAMILTON-WENTWORTH HSO MENTAL HEALTH PROGRAM

**The Chair:** I call representatives from the Hamilton-Wentworth HSO Mental Health Program. Thank you and welcome. We appreciate your coming before us today.

**Dr Nick Kates:** My name is Nick Kates. I'm a psychiatrist, director of the Hamilton-Wentworth HSO Mental Health Program and an associate professor with the department of psychiatry, McMaster University. I appreciate the opportunity to be able to present to you today. I come here not as a representative of any management, labour or advocacy group but as a clinical psychiatrist. My comments will be based upon my experiences in working with individuals who have experienced a variety of workplace injuries and disabilities.

The Hamilton-Wentworth HSO Mental Health Program is a program that locates counsellors and psychiatrists within the offices of 90 family physicians in Hamilton-Wentworth. I personally spend approximately

two days a week providing psychiatric care for individuals in the office of their family physician.

In this role, over the last two years I have seen approximately 70 individuals who have had emotional problems related to a work injury or an unresolved WCB claim. While some of these have been settled relatively smoothly, in the majority of cases the injured worker has encountered difficulties in negotiating their claim and entitlements with a compensation system that they perceive to be unresponsive to their needs. In many instances, dealing with the WCB has added to the emotional distress being experienced. I have seen many workers who have felt as desperate about their predicament as Roman Brzozowski, even though they have not resorted to a hunger strike to get the benefits to which they were entitled.

I would also emphasize that in almost every case the injuries and distress were genuine and not fabricated to further a disability claim. The workers I have seen are, almost without exception, decent, hard-working individuals whose lives have been changed by a quirk of fate beyond their control but who want to return to work. Many had relied upon their physical labour to support themselves and their families, something that was taken from them as a result of their injury.

My remarks today will also be based upon an understanding of the central role that work and working play in our lives, the meaning that a job can have for an individual and the impact its loss can have. For example, for an injured worker the loss of work means not only the loss of the economic benefits and security that work brings, but also other losses that may follow the injury or financial deprivation, such as the loss of social contacts, supports, an inability to participate in previously enjoyed activities and the loss of certain physical functions. The worker also needs to adjust to an image of themselves as disabled, handle changes in family or social relationships and cope with increased apprehension about their future and the additional stress they encounter.

Above all, however, individuals who are denied the opportunity to work, for whatever reasons, experience a significant loss of self-esteem and self-confidence. Work is central to our identity of ourselves, and to be unable to work leaves an individual feeling isolated, a failure and a non-contributing member of their community. It undermines their image of themselves as a provider for their family, which leads to feelings of guilt and self-recrimination, even though the injury was probably not of their making.

Any reform of the Workers' Compensation Board should therefore be based on two key concepts. The first is recognizing that being unable to work causes significant emotional distress and vulnerability as well as financial hardship, and compensation systems should make it as easy as possible for injured workers to cope with the change in their circumstances. Second, the community has a responsibility to assist these individuals by helping them maintain not only their economic wellbeing but also their self-worth and emotional well-being.

This was one of the founding tenets of the WCB in 1914, when workers agreed to give up the right to sue their employer in exchange for a commitment by the government to support them if they were injured on the job. The current act, however, frequently leaves workers struggling to obtain or being denied benefits to which they are entitled, creating additional stress and despair for individuals whose only crime is to have been in the wrong place at the wrong time. For many, this leads to despair, family distress, financial deprivation and poverty, all of which are preventable with a more flexible, worker-centred compensation system. Workers become victimized twice, first by their accident and then by the system that is supposedly there to help them.

Unfortunately, I see little in the proposed act that is likely to remedy these shortcomings and plenty that suggests it will become harder for workers to obtain benefits to which they are entitled or to receive the assistance they require to again become productive members of the community.

#### 1400

I would like to address five specific recommendations in the proposed act. These are (1) the recommendation to eliminate chronic stress as a compensable condition, (2) to place a limitation on the entitlement for chronic pain, (3) measures that will make it harder for individuals to get assistance to retrain or return to meaningful employment, (4) some economic issues, and (5) some administrative issues.

Beginning with the issue of stress as a compensable condition, there is an increasing body of evidence that stress in the workplace can become a disabling condition for a wide variety of different groups of workers. Work overload, a lack of support in the workplace, difficulty in worker-employer relationships and specific aspects of a job which, while varying from occupation to occupation, all create stress that can lead to significant physical and mental problems, usually depression and anxiety.

Recently, there has been increasing concern on the part of insurers about the incidence of work-related depression and its cost. Rather than acknowledging depression as an increasingly prevalent problem and significant public health problem — the World Health Organization has estimated that it will be the most prevalent health problem within 20 years — and looking at strategies for dealing with it, the proposed act seems to want to pretend it doesn't exist, thereby avoiding having to pay for it.

I acknowledge that assessing workplace stress is difficult for three major reasons. The first is difficulty in coming up with objective measures of stress. The second is attempting to identify the source of the stress and to differentiate what is work-related and what comes from other sources. Third, there is great variation in the ability of individuals to tolerate stress from one person to another. Despite these methodological difficulties, however, there is strong evidence that many workers experience severe and sometimes disabling stress because of their job.

Removing stress as a compensable condition has a number of serious implications:



First of all, it flies in the face of scientific evidence that has identified workplace stress as a real problem that needs to be acknowledged.

Second, by devaluing the concept of stress, it makes it less likely that workplaces are going to take steps to reduce the amount of stress that workers are exposed to. There is wide variation in the extent to which workplaces are currently aware of or attempt to modify stress. Anything that appears to reduce its significance is likely to be detrimental to one of the goals of the revised act, namely, to emphasize the prevention of work-related problems.

The third reason is that there are many individuals who experience significant stress-related distress or burnout or depression, which is usually short-term but requires a period away from the workplace to recuperate. If this option is removed, many workers will continue to be exposed to increasingly severe levels of stress which are likely to have increasingly detrimental effects on their health and wellbeing.

Finally, it is unclear from the language of the act whether it refers to stress or to stress-related depression as a non-compensable condition. If it is the former, it is likely that work-related stress will be redefined on claims as depression or anxiety, adding to, rather than decreasing, confusion. In fact the Ministry of Labour, in conjunction with the Ministry of Health, could possibly facilitate and support research into this area to come up with more effective tools for assessing and managing workplace stress.

Regarding chronic pain, while the revised act eliminates some of the most confusing and ambiguous language concerning chronic pain, such as the concept of genuineness, I have serious concerns about the suggestion that the duration of compensation for each episode of chronic pain be limited according to a preset formula. Each individual is different and each back, neck, head or musculoskeletal injury will differ in its recovery time. Physical pain and objective findings of disabling injury often continue long beyond the expected or average recovery time.

The key to the management of chronic pain is to have an individualized program that responds to the needs of individual workers. Having an arbitrary and often random date for recovery is going to exclude a number of workers who will have continuing pain, be unable to work and yet will be denied benefits to which they are entitled. I would recommend that this time limit be removed from the proposed act and return-to-work dates continue to be based upon recommendations of the treating health professionals.

Regarding recovery and rehabilitation and the change in wording from "rehabilitation" to "recovery," the issue of chronic pain I think leads directly into the issue of the need for rehabilitation and retraining to help individual workers return to work. The point of maximum recovery is in fact a meaningless term if it's taken out of the context of treatment or rehabilitation.

For example, one worker with whom I am familiar was deemed to be disabled following exposure to toxins. Because of some of the cognitive deficits resulting from his

exposure, he was unable to participate in work re-entry programs. This would have been defined as the point of maximum recovery. After much persuasion, however, the compensation board agreed to enrol him in a head injury program, which worked diligently with him and taught him a variety of new skills for dealing with his cognitive problems. This enabled him to enter a retraining program and to retrain as a tool and die maker, an occupation which he is now able to successfully follow.

My message would be to never give up on a disabled worker. The WCB remains one avenue which is able to offer rehabilitation and retraining that might not otherwise be available anywhere in the community. I would recommend as strongly as possible that this aspect of the board's work be enhanced. If the goal is to get workers back to productive employment, this is one of the most important routes.

Regarding economic issues, on studying the proposed act it is hard to escape the conclusion that its primary aim is to reduce the amount of money being paid to injured workers by reducing the amount paid from 90% to 85% of the worker's wage, by deindexing payments for all but a few totally disabled workers, and by reducing the number of conditions which are compensable.

All of these will cause increasing hardship. The most significant factor affecting the long-term wellbeing of someone who is out of work is the amount of financial deprivation they experience. The harder it is for workers to receive benefits, the more distress they will experience and the more we will see injured workers living in poverty without the option of being able to work their way out of it.

A couple of other administrative issues: Regarding advocacy, as the bill will no longer allow the office of the worker adviser to represent unionized workers, it will be harder for workers to get assistance or advocacy to assist them in dealing with a claim. The existing bodies in this community such as the injured workers' group or community legal clinics are already overwhelmed and have lengthy waiting times. These services will find it even harder to provide service for injured workers and make it less likely that injured workers will have access to resources they require to assist them in filing claims or appeals. This is one of the most consistent findings in the individuals I've been working with: feeling absolutely lost in knowing how to deal with the Workers' Compensation Board when an issue doesn't go the way they imagined and they have no one who can advise them or advocate on their behalf.

Last, to comment about the proposal to reduce the autonomy of the appeals decision, shifting it under the responsibility of the operations branch will reverse what I see as one the recent improvements in the act and should be eliminated.

If I put all the changes together, I see three clear trends in the proposed act. As a physician, I see a document which attempts to satisfy the insurers and employers at the expense of the medical needs of injured workers. It places limits on the ability of health professionals to develop

treatment plans that their patients require. There are many changes that could make the WCB more effective, but these should not come at the expense of the clinical needs of injured workers.

As a psychiatrist, I see a reluctance to recognize the psychological sequelae of many work-related injuries or situations or to consider these as compensable disorders. This denies overwhelming evidence that workplace stress can cause significant distress. I can only conclude that concerns about the cost of recognizing work-related depression or anxiety outweigh the desire to assist those who are experiencing these problems.

As a citizen of Ontario, I see a proposed act whose primary aim seems to be to reduce the benefits and resources available to workers, shifting the responsibility for looking after injured workers from the employer to the taxpayer, as many individuals who will be denied benefits will end up on some form of public assistance.

My misgivings are only reinforced when I view this act in conjunction with the proposed changes to the Occupational Health and Safety Act, which make it easier for employers to evade their responsibilities for workers' safety and harder for workers to deal with situations where they may be at risk.

If the government is sincere in its desire to create a progressive view of health and safety in the workplace, then I would suggest it looks at ways in which it can:

- Encourage and educate physicians and health providers about the treatment of work-related injuries, facilitating collaboration with the board and its representatives.

- Emphasize rehabilitation and the early treatment of work-related injuries. The delays in many of the cases I have seen have actually affected significantly the long-term prognosis and outcome, whether this be head injuries or physical injuries. The sooner treatment is approved and started, the better the likelihood for a complete recovery.

- Remove administrative impediments to workers receiving treatments they require, as quickly as possible.

- Ensure injured workers receive adequate levels of compensation.

- Recognize the reality of work-related stress.

- Develop a system that treats injured workers with the respect they deserve.

1410

**Mr Stewart:** Thank you, Doctor, for your presentation. You make the point on the last page, "Recognize the reality of work-related stress," yet on the front page you're suggesting that emotional problems you're dealing with are related to WC problems. My concern, if you could please answer for me, is how do you differentiate between family stress, or driving-to-work stress, all of these stresses, and not really be able to relate them to workplace stress? I think that's what we're trying to address. It appears to me that the WCB in its present form is creating more stress for the workers and for you than anything else.

**Dr Kates:** In the comment you refer to on the first page, what I was trying to say was that for a worker who is already injured or distressed, the problems in dealing

with the system add to the distress they're facing. They're not the cause of it, but they add to the distress of someone who is already feeling vulnerable, scared about their future and uncertain about their degree of physical recovery.

As to the question of work-related stress, as I think I tried to comment upon, it is a real condition. It's a very difficult condition to measure. There is a need to look at research. There had been research taking place. There are a number of instruments that have been used, particularly in western Europe, Germany, Scandinavia, attempting to define what are not only levels of stress, but what are acceptable and reasonable levels of stress. It is a complex area. The major point I would want to make, though, in this presentation today is to say it is a real problem, a real condition, and it shouldn't just be eliminated from the act. Instead, it should be included as a potentially compensable situation but with a lot more research going into how we do exactly what you're saying.

**Mr Stewart:** It isn't eliminated; it's still there as it relates to traumatic experiences.

**Dr Kates:** I think that's a separate condition. I think that's much easier to prove. But the kind of situations that I would consider as chronic stress are not a sudden trauma or a sudden injury. Those are fairly straightforward. My experience has been that for the most part those have been recognized.

These are people who are dealing with work situations that, for whatever reason, whether it be the nature of their job, their working environment, working relationships, are experiencing significant stress on a day-to-day basis, which has a cumulative effect and does lead to real clinical symptoms which are the equivalent of, if you like, repetitive strain injuries in a physical sense.

I would say it does happen. My experience has been that the vast majority of people in those situations don't claim because they don't think they have much likelihood of this claim being approved through workers' compensation.

**Mr Patten:** Thank you, Doctor. I appreciate your holistic approach to attempting to be of support to those who need healing. It's almost endemic to the system, it seems to me, of trying to relate everything to the workplace. It is almost impossible. I'm sure you're familiar with the concept of comprehensive supports for someone who obviously needs help, regardless of where they're from.

But I would like to ask you one question: Are you familiar with the layoffs that are going on right now in the vocational rehabilitation workers with the WCB? You identified that as one source of retraining. Presumably that will still be there, so the parliamentary secretary says, but it would be probably with the private sector. What's your view of that, given your experience in working with some of these people?

**Dr Kates:** The first thing is that there need to be adequate rehabilitation programs in place. At the moment, there is a shortage of opportunities for workers to retrain. It's difficult to get involved in those kinds of programs. At the moment, one of the issues I come across more fre-



quently is people who are waiting to get into private programs, not necessarily directly through the board, but who need the approval of the board to get in.

Personally, I would rather see the compensation board provide a comprehensive range of services rather than being divided up on a piecemeal basis and privatized, because once they get privatized, you start to run the risk of certain groups of workers being excluded because making a profit becomes a primary consideration in addition to or instead of the wellbeing of the workers. My preference would still be to see these services government-run, to see them expanded and to see obstacles to injured workers getting into these programs as quickly as possible removed.

**Mr Christopherson:** Welcome, Nick; a pleasure to see you here. For the benefit of members of the committee who wouldn't necessarily know Nick, he's very well known in our community and highly respected for his work in the community with regard to mental health. I think it says an awful lot when someone of his credibility and with the respect he has says publicly, "As a physician, I see a document which attempts to satisfy the insurers and employers at the expense of the medical needs of injured workers." I would hope government members give that the strength and importance it deserves.

Also, one quick comment before I ask a question. You mentioned stress. You were asked further questions by one of the government members. Earlier in Toronto we had a presentation, and you may know Dr Berman, the executive of the Ontario Psychological Association. She talked about the fact that their association believes you can identify the factors causing stress. I asked her point-blank: Do you believe you can do that well enough now, that you can with credibility identify what is work-related and what isn't? Her answer to that was yes.

Your suggestion that there be further work — there's a body of evidence; there seems to be some debate. I think it would be important on this issue if the government would pick up on Nick's recommendation and do the studies, do the initiatives, have it done objectively and let's wrestle this to the ground. Until we do, there are a lot of injured workers who aren't going to get the compensation they deserve.

The question I wanted to ask you, Nick — it'll be shorter than my statements — is that you said in your presentation, "The most significant factor affecting the long-term wellbeing of someone who is out of work is the amount of financial deprivation they experience." We've heard many employer groups come in and talk to the issue of being pleased that the net pay is being cut to 85%. Some want to drop it to 80%; some want to drop it to 70%; some even want a three-day waiting period. They've said things like, "It creates an incentive for workers to return to the job." What does this mean to you as you hear this? What do you think it means to workers in terms of their ability to go back to work and whether they should or shouldn't?

**Dr Kates:** What it means to me is that they don't want to pay. It's simple.

I've done a fair amount of research into the psychological impact of job loss, whether it be through layoffs or whether it be through injury, and there is absolutely conclusive evidence from the literature that the greater the degree of financial hardship a worker experiences when they lose their job, for whatever reason, the worse their outcome.

By worse outcome, I mean not only just their emotional wellbeing, but the greater the likelihood of family breakup, the greater the likelihood of other accompanying social problems and the less the likelihood of them returning to the workplace.

Again, I really stress that financial deprivation and the maintenance of someone's self-esteem are far and away the two most important issues for someone who is unable to work.

**Mr Christopherson:** Nick, thank you very much for putting your personal reputation on the line to support this issue; it means a lot.

**The Chair:** Doctor, thank you for coming before the committee with your advice this afternoon.

1420

#### HAMILTON AND DISTRICT INJURED WORKERS GROUP

**The Chair:** I call representatives from the Hamilton and District Injured Workers Group, please.

**Mr Vernon Peter:** Good afternoon. My name is Vernon Peter. I'm the president of the Hamilton and District Injured Workers Group. With me are John Battaglio, an injured worker and a volunteer counsellor at our office, and his daughter, Elizabeth Battaglio.

Before I get started I'd like to comment on the fact that we feel privileged, being one of the very, very few injured workers who have got a chance to have any input into this process. The Hamilton and Oakville health and safety WCB committee never got standing, when they've been working months educating the public on WCB and health and safety issues. I think the hearings should be extended so that the injured workers have some input into what's going on.

At this point I'd like to turn the chair over to Liz.

**Ms Elizabeth Battaglio:** I just wanted to speak on behalf of the youth of this province. I would like to remind all of you of the impact Bill 99 will have on all the future workers of Ontario. As a youth who has experienced the emotional and financial impact of living with an injured worker, I know the devastation that can result due to a workplace injury.

I am not alone in this devastation. Many injured workers and their families have been suffering in silence for years. Every one of us is a potential victim under the system of Bill 99, and my concern now is for all the youth entering the workforce in the future. Will they too be suffering as a result of workplace injuries and diseases? And will they too continue this legacy of devastation for

their future families? Under Bill 99, these cases are inevitable.

Bill 99 is a direct attack on the youth of this province. By dismantling the Occupational Health and Safety Act and by revamping the Workers' Compensation Act, the youth of Ontario are being stripped of their only means of insurance within the workplace.

When you take away our right to an independent appeals tribunal and especially the provisions on chronic pain, you will be sentencing the youth of this province to a life of pain and suffering.

I will tell you now that I, like many others of my generation, do not want to be a victim under the system of Bill 99. If I am injured now and if I suffer from chronic pain and if I am subjected to the proposed policies on deindexing, I will be committed to a life of poverty, but in the end I will still suffer from a work-related injury. Who will compensate me? The compliance model of enforcement that you're proposing will not, because this model is only compatible with an employer's interest in profitability and the maintenance of control over the labour process.

I sell my labour power as a condition of employment. I do not sell my body or my health and safety. To tell all the youth of this province that our bodies have been sold to employers for profit is to tell the youth of Ontario that our future is expendable. Why must we pay for a system that has nothing to do with us? It is a system that only had to do with the incompetence and irresponsibility of employers. It is not everyone's duty to pay for the system, but it is the employers' right to cover all work-related disabilities.

The younger generation's future under Bill 99 is very bleak. Where will we go? To the system of welfare? That is not the intention of the system and it should not be now. I would once again like to remind you of the future you are giving all the youth of Ontario and the subsequent future you will be giving your children. Workplace injuries and diseases do not discriminate, and certainly Bill 99 is a failure to my generation.

I would like to thank you all for the opportunity of speaking here today. The way this government is going, I may be the last of my generation to participate in public hearings since these rights too are being taken away from the youth.

**Mr John Battaglio:** My submission is on chronic pain. Chronic pain is reported to be the largest disability in the world. Chronic pain is pain that persists past the normal estimated healing time. To not acknowledge the legitimacy of genuine cases of enigmatic chronic pain and pain magnification associated with psychogenic pain disorder — it cannot be questioned in principle.

For the government to say that a worker should only be entitled to a physical organic injury and not a psychological or non-organic disability would be like saying that a person's brain was not part of their body. It seems that the Conservative government of the day believes in phantom minds. Looking at Bill 99, the Conservative government obviously showed the possibility of having this condition.

Bill 99 proposes to limit chronic pain to an "estimated healing time." In 1994 a medical report by Dr Nelson

Hendler from the Mensana Clinic and Johns Hopkins Hospital recognized chronic pain as having four stages, which can take up to 12 years to adapt to the disability and learn to live with it permanently.

Also of medical interest related to chronic pain symptoms: When medical science cannot find the organic cause of pain, the worker is disbelieved about the actual pain experienced, but surprisingly, new medical findings from Anthony Freemont and the University of Tours, France, found in bodies of cadavers an unusual nerve growth in the backs of people with pain; furthermore, these nerves were producing substance P, a peptide associated with pain. This indicates that perhaps the nerves and the blood supply were part of some type of healing process after an organic injury.

Further medical evidence on chronic pain past normal healing time can be documented through sleep studies. The tests reveal that chronic pain is beyond the control of the worker. In any event, WCB case 915 deals with the issue of chronic pain and addresses all the concerns on that subject.

The long-term viability of this system must be geared to benefits for work-related disabilities and their results. If this is not the government's priority, then the WCB system is a scam, because the WCB is downloading all disabilities on to the public welfare system and should be closed down. A new no-fault system for injured workers in a legal tort system should be developed to deal with workplace injuries.

The bottom line, to this Conservative government, is: Disabilities cannot be wished away.

**Mr Peter:** If Bill 99 is passed, it will be an economic disaster for injured workers and taxpayers.

The proposed deindexing formula will guarantee poverty for many injured workers and their families. It will force many on to social assistance, causing the welfare rolls to skyrocket. Time limits placed on chronic pain disability and the exclusion of chronic stress is not only unjust but discriminatory as well. This legislation attacks the most severely disabled the hardest, the very people it is supposed to protect.

As the 1983 Weiler report indicated, the first priority should be directing resources to those with the greatest need. At this, Bill 99 fails miserably. "If the object of disability insurance is to cushion people against the drastic financial effects of a serious injury on their normal life, the available dollars should be concentrated on long-term disabilities." The government cannot just wish away disabilities like chronic pain and pretend they no longer exist when in fact these disabilities worsen over time. These are the injured workers who require the most protection and are currently, by and large, the most abused.

The unfunded liability that is most important, that is never talked about by the government, is the injured worker's family's unfunded liability. Under Bill 99 the injured worker's family becomes poorer and poorer with each and every passing year. As the injured worker's health deteriorates, the economic hardship becomes greater under this scheme; the most severely disabled are



punished the most harshly. The system has become not one of compensation but one of perpetual economic torture which is intensified and magnified as time ticks away.

This government ran an election campaign based on economic prosperity for all Ontarians. How can they justify a law which removes any hope for any economic security for the most vulnerable in our society? Bill 99 is, in short, poverty guaranteed.

Also, this government ran an election on being tax-fighters, so why is the government putting legislation which downloads the employers' obligations on to the backs of taxpayers? Our health care system is already overburdened. Disentitling many injured workers by discriminating against their disabilities or by administratively denying injured workers benefits with the imposition of time limits on filing claims and appeals only accomplishes one thing; that is, employers are evading their obligations to pay injured workers' benefits, with taxpayers picking up the tab.

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The same applies to Bill 99's de-indexing formula. Using the WCB's inflation predictions, an injured worker's buying power will be reduced by 40% over 20 years. This, combined with the lowering of the base rate from 90% to 85%, will guarantee widespread devastation for injured workers.

I have been off work for four and a half years due to an injury caused by company negligence. I have not had any income over that period outside of 15 weeks of UIC disability — about \$4,900, less than my medical costs. I have just been given a hearing date by the WCB. If I had not written a lengthy letter to the editor in the Hamilton Spectator complaining about my abuse, I'd still be waiting today to be put on trial by my abusers, the WCB.

Over the same period, my employer, Dofasco Inc, received, since 1993, \$30 million in WCB rebates. This is when they adopted their policy of firing injured workers. Twenty-one of the fired injured workers have asked the Ontario Human Rights Commission to charge the company with systematic discrimination. Some have lost their homes and depend upon welfare and food banks. This is why the NEER program has been such a recipe for disaster for injured workers, as it is what drives employers like Dofasco to inflict these cruel punishments on their disabled workers. This is why rebates should be eliminated.

Injured workers have been dragged into a ruthless money game that corporations play. I believe that when I do get my hearing, my employer will further delay the proceedings, as they have successfully done in all other cases. Although I have no income, I would like to thank the taxpayers for the tens of thousands of dollars in medical care I have received that has been downloaded on to their backs by my employer. I have several other permanent disabilities that I have acquired, dating back to 1980. I have not received any compensation for any of them, either.

My only hope is for an independent WCAT, where I will probably end up, at some time in the next millennium. The WCAT should be given more authority to right the

wrongs caused by the WCB and award appropriate actual and punitive damages. This would go a long way in curbing the abusive policies of the WCB.

Injured workers are far and away the most abused people in North America. In the United States, their 1980 census reveals that 81.8% of all people in mental hospitals and residential treatment centres are disabled injured workers; 93.8% of persons aged 16 to 64 receiving health care in homes for the aged are disabled injured workers; 94.5% of persons receiving care in homes and schools for the mentally handicapped are disabled injured workers; and 91.1% of all persons in homes and schools for the physically handicapped are disabled injured workers. I myself am a psychiatric patient due to the abuse and neglect of my employer and the WCB.

Bill 99 should be withdrawn, as it does not address any of the problems faced by injured workers; it merely exacerbates them. It is hostile to both injured workers and taxpayers, as its only focus is to steal billions of dollars from them. It leaves a bleak future for injured workers, past, present and future, as it totally ignores their needs. Thank you.

**Mr Agostino:** I thank the presenters for an excellent presentation. You talk about the financial changes they have made — and I think we've got to look at what's behind this — and we have a ton of other changes they have made in this legislation that are punitive to injured workers: the reducing of benefits, the indexing, some of those changes that have occurred that will reduce benefits. I want to get your view on that.

One must wonder, are they doing it because they believe injured workers want to be there? "Injured workers are lazy and injured workers don't want to go to work, so we're going to punish them by reducing their benefits. We're going to give them a swift kick in the butt. If they try being welfare recipients, that will get them back to work." I think unfortunately that's the mentality.

There's a real lack of understanding that when people go to work in the morning, they want to come back home in one piece, take care of their family and feed their family. They don't want to be on WCB. Anyone in this room who has experienced that knows the hell that it is, and the pain and the suffering. Dr Kates, who was before us, talked about some of the other things that happen around that when someone gets injured. It's disturbing, because I think what is driving many parts of this bill is that attitude that injured workers are there because they want to be there and don't want to go to work.

I want to get your sense. From the injured workers you deal with and that you know, what is the prevailing attitude of injured workers? If the opportunity is there and the proper setting is there, do most injured workers want to get back to work as soon as possible, do they want to go back to what they were doing, or would they rather sit home and take WCB, as some of these guys across the floor believe?

**Mr Peter:** Oh, absolutely, Dominic. Injured workers want to get back to work. In our office we counsel approximately 1,200 injured workers a year. About half of

them, 600, say, are on welfare. With the welfare rates in Ontario being what they are, I don't think anybody wants to live like that, let's face it. The only alternative is work. They want to work; the problem is that they can't get a job. Some of it is because they're tied up by the WCB.

If you look at re-employment, the current section 54 of the act limits re-employment to two years. In my case, and for many other injured workers who work at this company in particular, the company successfully uses delay tactics to go beyond two years so that the re-employment rights are no longer there. You can't get your job back. You win your case five or six years down the road; unfortunately, your two-year limitation to get your job back is up now.

**Mr Christopherson:** Thank you all for your presentation. Elizabeth, I think all of us were duly moved by your presentation. Certainly it's not easy to come forward at the best of times, particularly when you're younger and don't have as many life experiences, and even more to be talking about personal matters such as this. I think I speak for all members when I say thank you for having the courage to come forward today.

My specific question is, you talk about what this may mean as young people look ahead to the future, thinking, "What if I get hurt?" I can only imagine what it must be like for a lot of your friends when you think about how difficult it is to even get a job. Youth unemployment is sky high, and then linked with that: "What if I get hurt on the job? If I'm not in a union place, I don't have anybody to represent me. If I don't know the laws, how do I ensure that my rights are protected?"

Can you just expand on that larger picture of what it must be like for a young person like yourself to be looking at all these things in the future, thinking about where you're going to be in 10, 20 years?

**Ms Battaglio:** I don't know. It's difficult, because we are very educated, one of the most educated generations. We go to university, we go to college, we try and better ourselves. There are no jobs out there for us. We get stuck in the worst-paying, low-end service sector jobs which have the most health and safety hazards, and no regulations because employers are not enforcing them. We have high turnover so nobody is going to enforce anything. We're terrified of our employers because we want a job. We're young. We don't know how to relate in the workforce that much because we don't have the experience.

When we go out there, we try to be as optimistic as possible that we will have a job. We want to work and we want to be productive. We want to help Ontario and we want to help ourselves, but the threat of Bill 99 on us makes things even worse. You're taking away our protections, and most of the youth don't even know what our protections are to begin with, so we're losing out already. If you make it even more difficult for us, like with the office of the worker adviser and stuff like that, you make it even more difficult for us to get the help we need or to realize what our rights actually are.

**Mr Maves:** Just a quick question about not knowing your rights in the workplace and so on. I don't know if you are in high school or if you are now in university.

**Ms Battaglio:** University.

**Mr Maves:** There is a young worker awareness program that the government has initiated to do exactly that, to talk to high school students about their rights when they go into the workforce. I was just going to ask if you had participated in that. Obviously not.

**Ms Battaglio:** I haven't at all. The only place I've ever seen it was the Hamilton labour board. They talked about that to me because I'm taking courses there, but otherwise, no. I remember when I went to my job there was no —

**Mr Maves:** It's recent. You wouldn't have had it in high school.

**Ms Battaglio:** There was nothing. Even the job that I have now, there was not very much mentioned on health and safety or what you're supposed to do or what your rights are or anything about the Workers' Compensation Board.

**Mr Maves:** What's the job you have now?

**Ms Battaglio:** I work at the Hamilton General Hospital.

**Mr Peter:** If it's still open.

**Ms Battaglio:** Yes. I'm luckier because that's a unionized environment, but some of my friends work at convenience stores, things like that, and the labour practices with health and safety in small workplaces are awful. They don't know anything. They'll be walking around injured for days and they won't even know. "Oh, well that's just a condition of my employment," which it's not. It's the employer's obligation to ensure that you have a healthy workforce, and a safe one.

**Mr Maves:** Which is the point about this program. Thank you very much.

**The Vice-Chair (Mr Jerry J. Ouellette):** Thank you very much for your presentation.

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#### HAMILTON PROFESSIONAL FIREFIGHTERS' ASSOCIATION

**The Vice-Chair:** We now ask for the representatives of the Hamilton Professional Firefighters' Association to come forward. If you could identify yourselves for Hansard.

**Mr Ken Phillips:** My name is Ken Phillips.

**Mr Walter Baumann:** I'm Walter Baumann.

**The Vice-Chair:** As I'm sure you're well aware, you have 20 minutes for a presentation. Any remaining time after such is divided equally between the caucuses.

**Mr Phillips:** Thank you very much for giving us the opportunity to talk to you this afternoon. My name is Ken Phillips. This is Walter Baumann. I am the chairman of the workers' compensation committee for Local 288 of the Hamilton Professional Firefighters' Association. I apologize for not having a brief to present to you, but we have been tied up non-stop for many hours per day trying to take care of the firefighters in Hamilton who were fighting the Plastimet fire. So unfortunately our brief is not as



complete or written out as we would have liked it to have been.

**Mr Christopherson:** A great job you did, by the way.

**Mr Phillips:** Thank you.

Let me start by reading to you from the Occupational Health and Safety Act. In part V, section 23(3), it states: "A worker may refuse to work or do particular work where he has reason to believe that...(b) the physical condition of the workplace or the part thereof in which he works or is likely to work may endanger himself."

That section is prefaced by section 23(1)(b), and it states that this section does not apply to full-time firefighters, as defined in the Fire Departments Act. I guess it would be Bill 84 now.

I in no way want to infer that Hamilton firefighters want to have the right to refuse dangerous work. We have a job to do and we're proud of the work that we do. We understand the inherent dangers that our occupation and our profession present to us every day. Our profession, through our local unions and through some of the employers, are working to try and take the dangers out of our work so that it isn't as dangerous as it is. But it is still one of the most dangerous professions in the world.

How can this government decimate the Workers' Compensation Act with Bill 99, strip out the vocational rehabilitation sections, neuter the Workers' Compensation Appeals Tribunal, do away with the Occupational Disease Panel, and expect the firefighters of this province to do their jobs without fear for their families' futures?

I haven't been given time to discuss all the ramifications of Bill 99. I know that you've heard all of the facts and figures about the costs of WCB in this province, so I'd like to cover just some of the changes to the act and how they will affect the firefighters in Hamilton.

When you are employed in a profession where studies in the US and Canada have shown that you can expect to get hurt doing your job once every four years, that you could injure yourself every four years, and that you may not have the right to come back after you've injured yourself and be a combat firefighter, and then you read in the paper that Cam Jackson says, and he told the Legislature, that he believes trying to rehabilitate injured workers with training and education programs was a waste of money – let me tell you a little story.

As you're all aware, on July 9 of this year Hamilton had one of the last disasters this province has had. There were over 239 firefighters at that toxic chemical fire, and one of our firefighters injured himself. I can't, because I'm bound by the rules of confidentiality, release his name to you, but I will tell you his story.

While he was on duty on July 9, he was on one of the first rigs to respond to that fire. I guess you can all assume that when you're putting a fire out, the normal procedure is to put the wet stuff on the hot stuff, and there was a toxic lake created in the area. That toxic lake contained hydrogen chlorides, which turned into hydrochloric acid; it contained dioxins; it contained BCME.

This firefighter didn't just inhale all those noxious fumes; he fell down in it. He almost drowned in it. He

ingested it and it went into his ears. That firefighter today is in very rough shape. He has now what we call chemically induced asthma, or reactive airways disease. At a meeting that I was at yesterday with many of the firefighters and some of the experts in this field from the Ministry of Labour and some of the occupational health clinics from around the province, a doctor in the Ministry of Labour told us that 18% of the people who suffer damage from hydrogen chloride can expect to never recover from the injuries they've suffered. This firefighter may never be able to return to being a combat firefighter.

What does Bill 99 do for that firefighter? If he's 25 years old and he's got three children and he's got a family, how is he going to be retrained? He needs a job. He needs to take care of his family. Bill 99 does not address that. All of the vocational rehabilitation has been stripped out of the act. That's just not fair and it's not right.

How can you, in all good conscience, sit here and even contemplate kissing off a firefighter who may be suffering from these diseases, or has even broken his back or burned himself so badly that being a combat firefighter again is completely out of the question? That firefighter we're talking about may have injured himself rescuing one of your loved ones, and now you're proposing that he has no right to be retrained for another job which will adequately take care of him and his family.

Your government is so intent on reducing the welfare rolls that you have introduced the workfare program in this province. Now I guess your intention is to put the bravest and the most respected citizens into your workfare program, because certainly Bill 99 isn't going to take care of them.

Two of the changes that you are proposing are interrelated, in my opinion, and directly relate to firefighters. Those are WCAT and the ODP, the Occupational Disease Panel. What a great way to ensure that workers in this province who are exposed to a toxic and dangerous substance will never be able to get the presumptive legislation to cover an occupational disease that may be specific to the occupation that they have. You're going to do away with a world-renowned investigative group so that no one can prove they're diseased, and then you take the teeth away from the agency that might be able to have forced the WCB into recognizing that occupational disease. I guess the Conservative government members who support this concept feel that certain cancers and heart disease and hearing loss, which are all before the ODP at this time with regard to firefighters, are just the cost of doing business in the business of saving lives in this province.

I look on WCAT as being one of the checks and balances of the compensation board. They not only make sure the board follows its own policies and procedures, but they can recommend to the board where their policies and procedures are wrong. They've done this in the past, to the betterment of workers in this province.

Another section of the act is in stress. Firefighters in this province and all through North America suffer post-traumatic stress disorder, a recognized problem made most prevalent during the Vietnamese war. A study in Seattle

has shown that firefighters in North America suffer post-traumatic stress disorder to a rate of 2,500 times greater than the normal population. The board in its own way now covers some types of post-traumatic stress disorder; that is, if there's one critical incident that you can relate your problem to.

The problem with post-traumatic stress is that it's accumulative, it builds up over time, and when you lose it, you may not be in the workforce. It may not be over a specific incident that you've been in. It could be something that has happened in your family. Is the board then going to consider that the stressor outside the workplace caused the problem you're having?

I doubt very much that there are going to be any changes in Bill 99. I don't have the confidence in the Conservative government to do it. This is a government for employers and not for workers. But remember one thing: You are the employees of the workers in this province. Be assured that the workers in this province in the next election are going to exercise their re-employment options.

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**Mr Bisson:** Ken and Walter, thank you very much for coming forward today and bringing what I think is a very powerful presentation. I always find that when people come forward and put things in personal terms, that brings it home to what it means to people in their daily lives. Sometimes we need to talk about the technical, but it's always good to get that other side.

Dave has talked to me about the work you guys have done on the Plastimet fire, about the quite difficult situation and the good job you've done. We talked about that yesterday at some length. As you know, I did a lot of work on Bill 84 and a lot of work with firefighters up in my area, so we had a bit of a chat about that.

To the point: You talked about the whole issue of WCAT and the ODP, or IDSP, as it used to be called. Finally, the ODP was starting to address some of the issues around industrial diseases, namely, lung cancer and brain cancer and the question of heart disease for firefighters. Finally it looked as if there was some light at the end of the tunnel. Do you feel betrayed at this point, considering what the government had said to the firefighters in the last election?

**Mr Phillips:** Certainly, that's legislation that the firefighters in this province have been trying to get enacted for years. It is known throughout North America that firefighters suffer from those diseases. As a matter of fact, many of the states in the United States have presumptive legislation to cover just those diseases. This government has betrayed us unbelievably. It looks like now we'll never get the legislation we require.

**Mr Christopherson:** You talked about the stress issue, and this has come up a number of times. I'm going to be very straight up about this: One of the differences with your presentation is that the government has seen police officers and firefighters as sort of their constituency, for reasons that we all understand, and we've got the Police Association of Ontario meeting in Hamilton and you've

read the stories in the Spectator. They're up in arms over what is happening under Bill 136. You've already taken your lumps under Bill 84 and Bill 26—

**Mr Phillips:** And 136 and 15.

**Mr Christopherson:** That's right: 136 and 15 and 49 and every other bill going.

This government is rapidly running out of any safe corner to hide in, and the fact that you're here today — I was responsible for that ministry and I am still haunted by that video of the commitments Mike Harris was making — he was going to do this and he was going to do that for firefighters — and I've seen nothing but betrayal after betrayal of everything he ever said.

I want you to know that your coming forward and making the statements you have made has a chance of having an impact. Injured workers know this government doesn't care about them, that they wrote them off a long time ago. But with firefighters there is some hope because they know that somewhere they've got to find a couple of votes in the next election. When you and the police start calling them for what they are and stand up with the rest of the workers and say, "Look, we're workers too and we're not going to put up with this," it makes a difference. Thanks for being here today.

**Mr Maves:** Thank you very much for your presentation. On the voc rehab and Mr Jackson's comments, I think at the time what he was getting at was that in many cases he had seen that voc rehab was unsuccessful in helping someone to get back to work, not with their original employer or subsequently.

One of the purposes of Bill 99 stated in the act is, "To facilitate the return to work and recovery of workers..." Then, in 42(7) it talks about a labour market re-entry plan and that the plan must provide for such steps as may be required to enable "the worker to re-enter the labour market" and to reduce or eliminate his loss of earnings from the injury.

From within that labour market re-entry plan I don't see that a voc rehab stint can't occur, and you think because voc rehab is not specifically mentioned in that section, that within a labour market re-entry it wouldn't be able to occur.

**Mr Phillips:** No, I don't think it will. I think you're putting way too much faith in the employers in this province to take care of their employees.

**Mr Maves:** Do you mean under section 40, under "Return to Work"?

**Mr Phillips:** You're much more familiar with all the sections of the act than I am.

**Mr Maves:** I know; I'm sorry. The "Return to Work" section where there must be cooperation between the employee and the employer is section 40. Under that section, is that the one where you think we're putting too much faith?

**Mr Phillips:** Certainly.

**Mr Maves:** Okay. The labour market re-entry, though, is the board's duty to the injured worker in concert with the injured worker and the health care practitioner. So my contention is —



**Mr Phillips:** Is the health care practitioner going to be a medical doctor or a nurse?

**Mr Maves:** There's a wide definition of "health care practitioner" that has several people within it, including doctors. The definition of "health care practitioner" has both in it.

**Mr Phillips:** So is it possible for a nurse at the Workers' Compensation Board to override the decision of the person's personal specialist? Is that a possibility under the section you're quoting to me?

**Mr Maves:** The intention is that it would be with the person's. It could be a variety of people: health care practitioners as defined in the act.

**Mr Patten:** Thank you for being here, and likewise congratulations on your efforts in the recent fire. It must have been quite an experience for you. Dominic wants to ask a question, so I'll be very brief. I think the answer is yes, that the board can overrule the best medical advice, and I think that's anathema, disaster. I don't think that's the way it should go, and if that can happen, then what are the values that will be driving the decisions? They will be economic.

I have worries about disbanding the whole vocational rehab division of WCB too. I don't mind a mix. I think that should be in there as part of the responsibility and stated why it is not utilized, rather than, why do you have to justify whether you need it?

If there are any experts in your profession — I suppose there may be a few others as well but especially in yours — able to comment, and probably empirical and clinical studies in terms of what it means for the accumulative effects of mental stress or emotional stress or psychological stress, call it what you like, which leads to physical impairment or difficulties — it doesn't happen from a single event. It's your profession, and as you point out, it doesn't necessarily happen in the workplace. You may have had 10 in the workplace, you have one outside, at home, and all of a sudden you snap or you have an episode or you fall apart or have a nervous breakdown, whatever it is. I think this committee would be well served to listen very carefully to your experience in your particular profession. I just wanted to say that. Dominic has a question to ask.

**Mr Agostino:** First, I want to add to what David and a few others have said in regard to the work here. I think everybody in Hamilton and across Ontario knows the risk that you and the men and women who work with you put themselves at that night and the days following. I think that brings to light even more the flaws in this bill and why there should be strengthening of the area they're looking at eliminating, because of exposures and because of the situations you face, like the Plastimet fire, where you have often been and where firefighters go in, and because of the lack of other regulations in this province, are blindly forced into a situation where they haven't got a damned clue what types of chemicals they're dealing with and what is coming out of that particular fire, and then the effects are felt years later.

This bill takes away many of the protections that have been built up over the years. How do you gauge the sense? What is the morale of the people you work with right now as a result of what has happened and as a result of what you see through this type of legislation?

**Mr Phillips:** I can tell you right now the firefighters in Hamilton are not only extremely stressed out about the Plastimet fire because they're worried about their families and they're worried about the compensation board probably not covering the cancers they may get in five, 10 or 15 years from now, but when they look at the legislation, Bill 99, when they see what the government is proposing to do to the compensation board that already doesn't treat workers with the greatest of respect, then everybody is very scared of what their future holds.

**The Vice-Chair:** Thank you for your presentation.

**Mr O'Toole:** On a point of order, Mr Chair: I also wanted to express my gratitude for the exposure to risk that firefighters and police in this province undertake as part of their duty. It's respected and appreciated. That's real.

**The Vice-Chair:** Thank you. We appreciate that.

**Mr Baumann:** I just wanted to make one comment about what Mr Agostino mentioned. As my Brother Ken Phillips mentioned, the stress we are under, especially from this Plastimet fire, and with the documentation we've been forced to teach our members to put into effect from the fires we've learned about, like in Kitchener and their dealings with the WCB, one way you would help firefighters in Hamilton would be by not reneging on what the Premier initially said about calling a public inquiry into this fire.

**The Vice-Chair:** Thank you very much for your presentation.

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#### NIAGARA WORKERS COMMITTEE FOR WCB AND HEALTH AND SAFETY

**The Vice-Chair:** We'll now call on the Niagara Workers Committee for WCB and Health and Safety, if you could come forward and identify yourselves for Hansard, please.

**Mr Smokey Milojevic:** The Niagara workers committee would like to thank the government of Ontario for the opportunity to speak at these hearings on Bill 99. I am Smokey Milojevic, chair of the Niagara Workers Committee for WCB and Health and Safety. I'm also the WCB representative for CAW Local 707. That's Ford of Oakville, Ontario. We have with us here Canan Rosnuk, from the Niagara community; and Tim Lambert, member of the Niagara workers committee and the president of CAW, Local 676, Dana, of Thorold. We represent over 32 different groups in the Niagara region.

I'd like to read to you our mission statement so that you know exactly why we're here and what we're going to speak about.

Our mission statement is clear in that we are dedicated to protecting the rights of workers to earn their living in a safe and healthy workplace, to refuse unsafe work, and in case of work-related injuries and illnesses, to receive proper care and treatment without either their dignity or their living standard being undermined. We also believe in the rights of those who lost their loved ones due to work-related accidents or diseases.

Over the past year, because of the proposed massive negative effects of Bill 99, this group's main objective was to have public hearings in the Niagara region and other regions throughout Ontario. During the past year we have petitioned the MPPs in our area, such as Tom Froese, Tim Hudak and Frank Sheehan, all of whom are Tory members, NDP member Peter Kormos and Liberal member Jim Bradley. In each case the request was the same: We wanted public hearings in the Niagara region and throughout Ontario.

We first learned about Bill 99 and its implications through a leaked document. Our group wanted answers to questions we had concerning the document. We planned a public meeting with our group and the local MPPs of our area. Letters went out and phone calls were made to each MPP to attend these meetings. Not one Tory representative came, nor did they send in a letter of regret. Mr Bradley sent in a letter and also made comments on the bill. Mr Kormos was the only government MPP to attend our meeting.

During this meeting, nobody from the government, which wanted these changes to workers' compensation, was there to present their views on why they were needed.

Then, on November 7, 1996, the Niagara workers committee had a live talk show on a local cable community station. We had asked again that the government be present, and again they did not take this opportunity to be present and answer the many questions from the people they are supposed to be representing. As the show got under way, we were overwhelmed with the response from the public. We spoke about the unfunded liability, the rewriting of the act and the changes concerning the cuts to other departments, such as the Occupational Disease Panel, the office of the worker adviser and so on. Oddly enough, not one employer and not one supporter for the government's changes to the compensation act called in to voice their support for the bill.

There was such a response to the talk show that we decided a free community clinic would be set up on workers' compensation and health and safety. With the help of the city of Niagara Falls, the clinic was held on April 3, 1997. Over 75 people came in for help and advice on workers' compensation, a sure sign something is wrong with the way injured workers in our area are dealt with when it comes to compensation. The outcry at these two events left our group with a stronger demand that the hearings for Bill 99 be in the Niagara region.

With this, we went to each city council in our area with a resolution on Bill 99. Port Colborne, St Catharines, Niagara Falls, Thorold and Welland all supported our efforts, that Bill 99 will undermine the rights of injured

workers and that these injured workers should be heard from in the form of public hearings. Letters went to the Premier's office, and to date I have not yet received a response to any letter sent by city councils about our concerns.

Let's talk about the bill itself and how it came about. This government's agenda on workers' compensation changes is a direct result of pressure from the big business communities. The government's agenda on workers' compensation has a direct connection with the proposals prepared by the business caucus of the Premier's Labour-Management Advisory Committee dated October 20, 1993. Mike Harris announced in the Legislature that business proposals now formed the Tory's agenda for workers' compensation.

The business caucus document urged a return to the original intent of the Workmen's Compensation Act of 1914. They proceeded to make recommendations regarding entitlement which would move WCB prevention back 80 years, to where there were few diseases recognized as work-related, before the issues of repetitive strain and stress were considered health and safety issues. Perhaps this is why we no longer are going to have the Occupational Disease Panel.

The workers' compensation system is entirely financed by the employers' contributions paid into an account funded and administered by the board. However, some major sectors of the economy are not included. For example banks, insurance companies and law firms are not required to contribute to the WCB fund. How is it that these same examples also post some of the highest profits, billions of dollars in some cases?

Why is this government attacking injured workers and not the employers of these 700,000 workers that do not pay one cent into this fund? Perhaps these companies are too great a challenge for this government. The injured workers, on the other hand, are an easy target.

On January 1, 1997, this government gave back 5% to employers in the way of premium reductions, yet wants to reduce the injured workers' rates from 90% to 85%. What happened to the word "fair" in the act? This government was elected by democracy and dictates by hypocrisy.

Mr Maves, you are the parliamentary assistant to the labour minister. How can you tell me that Ontario employers pay some of the highest rates in Canada, yet 700,000 employees are exempt from compensation premiums? Do the people of Ontario know that in your own riding, your very own riding, Casino Niagara employees are not covered under WCB? This is over 2,500 people. This is a government-run operation. How can you tell injured workers that they will have to make up the difference by reducing their benefits to cover the unfunded liability when you exempt big business, who are making millions of dollars in our own backyard? It's time this government did what was right: Focus on the employers that don't pay anything into this fund, and not further cripple injured workers with this bill.



1510

I'd like to read this letter sent to me by the Minister of Labour. I'd like to just touch on how we got to this letter from the Minister of Labour. We went into Mr Maves's office and requested a meeting with Mr Maves. We had approximately 70 to 75 people there, a great number of whom were injured workers who wanted to present their own cases on Bill 99. As a result of that, because we wanted hearings in our area, this meeting was set up. This is the letter I sent to Elizabeth Witmer, Minister of Labour, requesting a meeting regarding Bill 99:

"Our repeated requests for public hearings in the Niagara region have not been heard. We want public meetings held here in Niagara. We would like to meet with you in July.

"Niagara workers for WCB and health and safety."

We didn't meet with her in July, obviously, but I would like to read the letter she sent back to me:

"Dear Mr Milojevic:

"Thank you for your handwritten note of July 17 faxed from the office of Bart Maves, MPP. Your concerns have been forwarded to me and I appreciate your interest in having public hearings on Bill 99 come to your area. I understand that you've had the opportunity to meet with Mr Maves on several occasions. As parliamentary assistant, Mr Maves sits on the standing committee on resource development which is charged with examining Bill 99.

"Determining the time and location of the committee is the responsibility of the committee itself. As a result, your request to have the hearings come to your region will be most appropriately put to the committee."

Mr Maves, you said you would go to the committee and ask that the hearings be extended. Yet we understand that you were the first to rise and not support our request.

**Mr Maves:** I didn't say that.

**Mr Milojevic:** You'll have your chance.

How can this government allow a group that represents over half a million people only 20 minutes to address all the concerns that this bill presents and the lives it will change forever? We are not willing to sacrifice injured workers for more jobs and their so-called unfunded liability. Our request remains the same: We want more public hearing in Ontario so that injured workers can be heard.

**Mr O'Toole:** Thank you very much for your presentation today. It's very important that we, all members of this committee, hear from injured workers across Ontario and your groups that represent collectively, as you've said, some 50,000 is it in your area?

**Mr Milojevic:** Approximately, with the 32 different affiliations, over 500,000.

**Mr O'Toole:** I have myself in my region met, and I'm sure every member meets regularly with injured workers and deals a lot with compensation problems within their constituents. We're all trying to do our best. In my area there isn't a specific hearing. Technically, they appeared in Oshawa. Many of the injured workers had to go to Oshawa.

**Mr Milojevic:** Just a moment. Oshawa is not even appearing from your region, Mr O'Toole.

**The Vice-Chair:** Order please.

**Mr O'Toole:** I just want to make the point that I spoke to Mr Maves about this. I know you had been to his office some four or five times. He did his best, I'm sure, but in southern Ontario, this is considered part of that catchment area, as I suspect the Oshawa area is considered part of Toronto. We are visiting seven cities. The House leaders of all three parties do make the agreements.

**Mr Milojevic:** Extend the hearings; that's what we're here for.

**Mr O'Toole:** We are listening. The points you made are very similar to those other injured worker groups have made. What I'm looking for in this particular opportunity to ask a question is — I suspect we could deal with some of the return-to-work legislation or the proactive parts. The prevention part of this bill is new. You know, certainly, as a group that advocates both through the CAW and the injured workers, that the whole review of the WCB has been ongoing since 1981, all three parties. Presenters here today without exception have complained, and the specific cases we heard about are with respect to the dysfunctional nature of the current legislation. It's been under review by every party; they had two bills that tried to improve the system.

With respect to the sustainability, it was part of our original election promise that the royal commission would be dissolved.

*Interruption.*

**The Vice-Chair:** Order, please. Mr O'Toole, you have 30 seconds.

**Mr O'Toole:** I want to make one statement and ask for your response. The public auditor for Ontario, Erik Peters, who's non-partisan, non-political, in 1995 said about the liability for the WCB — I'm going to read his statement. This is an independent professional, not some politician like me or anyone else. "A strategy to deal with the unfunded liability should be developed and implemented as quickly and as effectively as possible."

*Interruption.*

**The Vice-Chair:** Order, please. Allow the presenters to answer, please.

**Mr Milojevic:** I'd like to answer that by Mr Bart Maves's own words, that is, that the unfunded liability is falling because of job creation already. It's falling already. If you had gone after those 700,000 people who don't pay a nickel into that fund, it would probably have been greater. That's where the focus should be.

**Mr Agostino:** To respond to the remark about a supposed agreement by the House leaders, certainly the time limitations on these hearings were not agreed to by the House leaders. The time and date limitations were imposed by your government. There has been a request literally at every hearing by the member for Hamilton Centre to extend the hearings; he has requested unanimous consent on every occasion. The two opposition parties have agreed with that, and the government has continuously been the party that has not given unanimous consent. You still have that opportunity to extend those hearings right now, as you had this morning. You denied that.

I want to ask a couple of questions to the people at the end of the table. With some of the things they've done, I want to ask what you think the impact will be. How do you see cutting benefits from 90% to 85% helping injured workers?

**Mr Milojevic:** It doesn't help injured workers in the least. I believe the percentage an injured worker receives right now is approximately 15% — is that what the average is right now? — 15%, which is a pittance, yet they want to take 5% away from that total yet. It doesn't help; it further hinders.

**Mr Tim Lambert:** If you take 5% out of injured workers' pockets because they're injured, what you're doing is just reducing their standard of living. In turn, you're just turning around and giving it back to the employers.

**Mr Agostino:** What benefit do you see in the reduction of the inflation protection for this through the capping and the deindexing? Do you see any benefits in that for injured workers?

**Mr Lambert:** It doesn't.

**Mr Agostino:** What about the issue of chronic pain and setting arbitrary time limits that tell you, whether you're well or not, that you're going to be well within that time period? What impact do you see on injured workers? I think that's a key one.

**Mr Lambert:** All it does is reduce the injured workers' rights, reduce their benefits, destroy their morale. There's nothing positive in Bill 99 for injured workers. It's a shame. We had a meeting with you, Bart Maves, and you said the information from the royal commission was looked at by the Jackson report. That's what you said. You said it was part of the thing of scrapping it. If somebody took the time and looked at the reports from the royal commission that were done already, this Bill 99 wouldn't be looking the way it is right now.

**Mr Agostino:** On the previous point on the hearings, I think it's really indicative of the members' clout when you have so many members from the Niagara Peninsula on the government side and can't get public hearings in the Niagara Peninsula.

1520

**Mr Christopherson:** What a lot of injured workers are finding most insulting, rather than employer groups coming forward and saying, "Yes, we think injured workers ought to be hit and here's the reason why," which would outrage people, but at least it would be honest, it's those employers that come in and say, "Oh, this bill is good for workers and it'll make it better and it'll give us a safer workplace." Everybody knows that's patently untrue.

How I tie that into what's happening here is that we have government members and the minister — the minister wrote this. I'm going to re-read the letter to Smokey. It says: "Determining the time and location of committee hearings is the responsibility of the committee itself. As a result, your request to have the hearings come to your region will be most appropriately put to the committee." The minister knows that leaves the impression that it's our decision where we go. Technically it is, but we can only

go so far in six measly days. You said, Mr O'Toole, "He did his best, I'm sure," meaning the parliamentary assistant.

All of this is words. This committee has the ability, with unanimous consent, to put in a motion to the government and the House leaders requesting an extension of these hearings. If we did that, the decision would still be that of the government. Politically, you and I know the minister couldn't withstand the pressure of all of you joining with the rest of us.

Therefore, I want to put it to the government members again today, will you do the right thing? Toni Skarica, although I disagree with his politics, at least has the guts to stand up and speak for our community. I'm asking you to stand up and speak for the injured workers in your ridings. I'm talking to you now as a fellow parliamentarian. Will you give me unanimous consent to place a motion like that so we can have proper province-wide hearings? Will you do it right now?

**The Vice-Chair:** Have we got unanimous consent? No, there is not unanimous consent, Mr Christopherson.

**Mr Christopherson:** Who said no?

**The Vice-Chair:** There are a number of members who have said no, Mr Christopherson.

**Mr Christopherson:** Which members? All the ones I see over here agree. Who disagrees? Put your name on the record; otherwise, it's unanimous consent. I've got unanimous consent, Chair. I then want to move my motion.

**The Vice-Chair:** Mr Christopherson, I called the question. There were a number of noes.

**Mr Christopherson:** Chair, all I want to know is, who said no? I didn't hear anybody. Who is going on the record to say no?

**Mr Stewart:** On a point of order, Mr Chair: I said no.

**Mr Christopherson:** Gary Stewart refused. He singularly stepped forward and refused to allow unanimous consent. You explain that to the injured workers in your riding, Mr Stewart. You say you care about injured workers and you won't even let them be heard.

**The Vice-Chair:** Order, please, Mr Christopherson.

**Mr Christopherson:** You don't care about democracy and you don't care about these injured workers. Shame on you. You're a disgrace.

**Mr Stewart:** I suggest I probably care for them more than you do because I want to listen to them.

**The Vice-Chair:** Mr Stewart, please.

Thank you very much for your presentation.

**Mr Milojevic:** It's unbelievable that injured workers cannot be heard. That's unbelievable.

**Mr Lambert:** If you cared more you'd be saying, "Let's do it."

**The Vice-Chair:** We call the Hamilton and District Labour Council representatives to come forward, please.

**Mr Bisson:** On a point of order, Mr Chair: The standing orders are quite clear about how we deal with calling for unanimous consent. The consent is asked for by a member of the committee. It is then the responsibility of the Chair to ask if there is unanimous consent. I say to you, the question was asked and no one actually said no,



so therefore the motion has been passed and the motion is duly before us now.

**The Vice-Chair:** Mr Bisson, I was in the chair at the time. I did call the motion.

**Mr Bisson:** Let me ask the people, did anybody hear the committee say no? Did anybody say no?

*Interruption.*

**Mr Bisson:** We've got a whole bunch of people in this room who didn't hear one no from the government side, and only your word. His unanimous consent stands and we're able to put the motion forward.

**The Vice-Chair:** Mr Bisson, I've been fair on all my policies with all parties. People have not agreed with all my decisions but I've been fair with everybody as much as I can. There were a number of noes at the time of the call. I did call the question.

**Mr Milojevic:** Mr Chair, I sat here on this side of the panel and not one said no.

**Mr Christopherson:** On a point of order, Chair: On this issue, you did say you heard some. When I asked one of these members to go on the record, they sat there in silence. When I then said I must have unanimous consent or somebody would say something, that's when Mr Stewart stepped forward and said he was prepared to block it. That's why I said he's a disgrace to the Legislature of the province of Ontario.

**The Vice-Chair:** That is not a point of order, Mr Christopherson.

#### HAMILTON AND DISTRICT LABOUR COUNCIL

**The Vice-Chair:** We ask the members of the Hamilton and District Labour Council to come forward.

**Mr Wayne Marston:** I'm Wayne Marston, the president of the Hamilton and District Labour Council. Before I start my presentation, I want to say that I am not going to speak on our brief at all. If you're the least bit interested, you can read it. The title of the brief is "A Bill which will Enhance Injuries and Deaths on the Job."

One point I'd like to make right away is that somebody came to me at the back of the room and said, "You're shaking." I just want to be very clear with the members here that it's not fear; that's anger.

Yesterday when I was finishing up that presentation, I found myself so terribly frustrated by having to be party in any form to this terrible injustice about to be perpetrated on the workers of Ontario. To its shame, this provincial government headed by Mike Harris has repeatedly turned the democratic process of Ontario against the most vulnerable in our society. When you consider that under existing WCB legislation thousands of workers with disabilities find it necessary to resort to welfare to sustain themselves, that should be shameful enough. But now we have Bill 99 and the mockery of this committee, hearing only 130 presentations out of 1,300 requests on an issue so critical to the workers of this province as WCB.

Earlier this week, as I made a presentation to the city council of Hamilton on another piece of anti-worker leg-

islation, Bill 136, I said to that committee that I was of the opinion that the overall agenda of this provincial government is to take labour relations in our province back to pre-1946. By the way, that city council, to its credit, passed a unanimous motion to call for the withdrawal of Bill 136.

The communities in which we live are starting to realize how your government has sectionalized us and has tried to pick us off one at a time. You started with the weakest in our society, with people on welfare. To your shame, you cut their incomes. That rippled through the community, because they have to spend every dime they have in the corner variety stores. I've been in variety stores that have said they've lost business because of what you did.

I also told that same committee that as the co-chair of the Hamilton Days of Action, I had been confident enough at the time to tell the city of Hamilton that the Hamilton Days of Action in February 1996 would be peaceful. Today I'm equally as confident that the myriad anti-worker legislation such as Bill 7, Bills 26, 136, 84 and 99 will guarantee the most unstable and downright dangerous situations in our workplaces and potentially on our streets as has been seen in this province since the 1946 strikes. You're going to have to wear that because you are the cause of that. I take no satisfaction in making that statement, because I'm a believer that those of you who are elected are supposed to govern for all of us in the community, not your corporate buddies.

I find myself caught between two opinions of this government. There's a side of me that seeks compromise and balance which says you simply can't all be this out of touch with the workers of the province and the other people you're supposed to represent. The more cynical side of me says you're not out of touch, you just don't give a damn.

I'm here today speaking for over 50,000 workers in the Hamilton district and their families, and I have to wonder if this government really cares. I doubt it. I sincerely doubt it, because the things you repeatedly do can't be construed in any way but as an attack on the livelihood and the lives of these workers.

#### 1530

How any modern-day government can possibly consider the measures set out in Bill 99 is simply beyond comprehension. How many members of this government caucus have worked in a steel plant or a heavy equipment plant where one false move can be deadly? How many of you have had to place your hands in close proximity to heavy equipment machines that can crush them out of existence? How many members of this government have had to repeat a simple hand movement over and over until carpal tunnel sets in and your wrists are inflamed to the point where only surgery can begin to alleviate the pain and you're caught wearing braces on your hands for the rest of your life? How many members of this government have had your backs damaged to the point that the pain is so intolerable that you've — it's so interesting to see this fellow reading while I'm trying to talk about something so

God-damned important. You can read that at your leisure, sir. I'm here to make some points to you today.

The reality is that there are people, some sitting in this audience, with back pain and other pain to the point that they consider suicide. They need the help of their government. They don't need Bill 99. I don't want to believe that those of you who sit here on behalf of the government are so callous and set in your ideological path that you are unaffected by these hearings. I don't want to believe that. I try to look for the good in people. But you're not showing it. You're not showing the workers of this province one bit of sympathy for the situation they find themselves in.

You have got to relent in this. You've got to understand that your government was elected — we accept the fact that you're elected to govern, but you're not elected to change the fundamental identity of our province and our lives. Surely to God you don't believe that the people who sit here are politically driven, that they're people who are here just manufacturing and lying to you. They're people who care.

We sent a bus to come from Hamilton, and of the people who are in the room today, 20 came on that bus. The rest came on their own hook. They're not paid to be here. They're here because they're trying to get a message to you.

Look at my hands. They are trembling out of honest emotion and caring for what's happening here. I hope to God some of that transfers to you.

Do you not understand that you're the last possible point of dignity for many of these people back here, their last chance to have a life that has dignity at all? I ask this committee to recommend to the government of Ontario a total withdrawal of Bill 99 and a return to some semblance of balance and fairness in the administration of the WCB. Tell the Minister of Labour and the Premier to set aside their personal prejudices that are so apparent to us and meet with our leaders and our health and safety experts. Together we could make this province a healthy and safe place to work, and we're prepared to work with you. Meet with our leaders. Be sure we all understand one another, because we're setting up walls and barriers in our communities as a result of the legislation I have mentioned already that are going to take years to dismantle. That'll be after this government's gone, by the way.

**Mr Agostino:** Wayne, I appreciate the presentation. I know that the emotion and the passion with which you speak are sincere, because you have an outstanding track record of representing men and women in this community and the labour movement. For the government members who don't know Mr Marston, it is a very sincere and well-thought-out presentation here today. It speaks well of the feelings of many people in the labour movement in this community. I want to congratulate Wayne personally for the excellent presentation and the feeling you brought to it.

It's important for the government members to understand what happens when someone gets injured at work. It's not simply a matter of dollars and cents. It's a matter of dignity, it's a matter of family, of how it affects you emotionally, how it affects your whole life.

There are so many things in this bill. It's so frustrating, as someone who lived until two years ago in the situation where for 23 years, someone was devastated as a result of a workplace injury. Someone who had worked their whole life from the age of 13 on, at the age of 37 ended up in a wheelchair for the rest of his life as a result of a workplace injury. I saw the number of times suicide was an option. The only thing that kept him going were Tylenols every four hours, 24 hours a day, to keep the pain to some reasonable level.

I think that's what Wayne was trying to bring forward, that there is a real human price here to every, single injured worker. It's important to put the politics of this thing aside and to put the interests of big business aside and realize that in your hearts you sincerely cannot believe that what you are doing here in this bill is not going to hurt men and women across this province who get injured through no fault of their own.

I would ask you on the way home to drive by city hall. There is a monument to injured workers right in front of city hall that was put there as a result of work by the labour council and other organizations in this community a few years ago. Stop by that monument for a second and try to understand the impact. I think Wayne reflected that.

Of all this legislation, as atrocious as it is, Wayne, what do you see as the most devastating part of this bill on injured workers, if you had to say to the government, "Change at least this one thing that we think is absolutely the worst"?

**Mr Marston:** No.

**Mr Agostino:** Scrap the whole thing?

**Mr Marston:** The whole thing. You have to look at the damaging tone. What will happen to the relationships between labour, employers and their government? There is not a piece in there that we should stand for. We should be going back to the beginning. Yes, there are things that need to be corrected at WCB, but if you do that on your own hook, if any government does that on its own hook and leaves the worker representatives and the workers out of the process, it will not be fair, it will not be balanced.

**Mr Christopherson:** Wayne, I know exactly how you felt when you sat down. I reached one of those points yesterday. The motel-hotel association came in and did this whole thing. Three times on one page they said this was a fair deal for employers and employees and ended by saying that the best thing that could happen for injured workers was to pass Bill 99. I reacted much the same way as you did. You can only take so much. Eventually, you just have to let your emotions take over. I understand exactly how you feel.

I can also relate to the fact that you, as the leader of the labour movement in our community, know as well as I the litany — and you listed some of them — of anti-worker changes. This government has not made one change to a piece of labour legislation that hasn't hurt working people, yet this government still goes out there and says, "We're being fair and we're being balanced and we're taking care of people." It's just a load of crap. It's not the truth.



Take a look at Bills 15, 49, 7, 136, 84, God knows 99, the Occupational Health and Safety Act white paper you've got out there, the legislation pending for the teachers, and you're going to come back again on a further attack on the Employment Standards Act, and then on top of it all, you went and changed the rules so that you could ram this stuff through even quicker. And you wonder why you come to public meetings and people are so enraged.

The reason the government only gave six days is very clear. Personally, as individuals, they didn't want to face all this. They know this is an attack on working people, that it's indefensible. I wouldn't doubt for one minute that each of these members who thought they might be on this committee lobbied the minister like crazy in the background, saying, "For God's sake don't put us out there for very long, and for God's sake don't come to my community, because I don't want to face the bad publicity." That's the reality of what's going on.

If I'm so wrong and I'm so full of it, fine. Prove me wrong and convince Gary Stewart to change his vote so we can go out into those communities. But you're not going to do that. You've got the chance now. I've been asking every single day. If I'm all that wrong, you can prove me wrong with one move. Any one of you can ask for unanimous consent. Lord knows I'll give it.

Don't sit there and say nothing in this committee to me and just stare and then in the background offer up your snipes and comments. The fact is that your caucus hasn't got the guts to go out across Ontario and face injured workers.

**Mr Bisson:** I've got 30 seconds, but I've got to leave you with this. I know it's frustrating for a lot of you to come before us and present. You wonder, in the end is it going to make any difference? Is the government going to listen? I think Dave makes the point that it is really important that people come out and do what you're doing today, because in the end you wear these bastards down. Keep on doing it.

Chair, on a point of order: I think I used a word that was unparliamentary, and I withdraw it.

**Mr Marston:** Mr Chairman, I would like to make the comment that it is time for the government of Ontario to start representing the people to the government and not the government to the people. I have no more comments for these guys.

#### CANADIAN AUTO WORKERS, LOCAL 676

**The Chair:** We now call on the Canadian Auto Workers, Local 676. Good afternoon, gentlemen. Of course you know you have 20 minutes for your presentation.

**Mr Tim Lambert:** Before my 20 minutes starts, coming out of the Niagara area, as it seems that with Mr Stewart's objection we're not going to have any more hearings, shall we wait for Bart Maves to come back?

**The Chair:** No. Please continue.

**Mr Lambert:** Mr Maves has made a few comments to us. I think he could give us the courtesy to come back and

be in the room while I make my 20-minute presentation. I don't want him saying, "You didn't tell me this and you didn't tell me that," because I'm not finished with my representative in the Niagara area.

**The Chair:** Someone will go and try and find him. As you know, we sit all day.

**Mr Lambert:** I've been here all day also.

**The Chair:** Anything you say will be on the Hansard record. Please begin.

*Interruption.*

**The Chair:** Excuse me. If you would care to, you can withdraw at this point and we'll bring the next witnesses forward if they're here. You could come up again later, if you think that will be easier.

**Mr Lambert:** I've been here all day too, and I've been slotted in on this time period. I'd like Bart Maves here and I'd like to do it now.

**The Chair:** Then let's go forward please. You can either start now or you can withdraw and start in half an hour or so.

**Mr Lambert:** Can we not take two minutes — you've been sitting here all day — to find Bart Maves and ask him to come back?

**The Chair:** Why don't we recess the entire committee for five minutes and we'll resume in five minutes.

*The committee recessed from 1542 to 1552.*

**The Chair:** Ladies and gentlemen, we'll resume hearings, please, and welcome once again our presenters representing the Canadian Auto Workers. Gentlemen, if you would introduce yourself for Hansard, please begin your presentation.

**Mr Lambert:** I'd like to thank Bart for the extra little break there. It's been a long day. Also I'd like to thank Bart for being probably the longest presenter over these hearings, giving me more than 20 minutes, with this break included.

I'd like to once again thank you for the opportunity to be here today.

**Mr Maves:** You're welcome, Tim.

**Mr Lambert:** Okay.

My name is Tim Lambert. I'm president of Local 676, out of Dana Canada, representing 700 employees. I am also a member of the Niagara Workers Committee for WCB and Health and Safety. We have 32 groups as members.

I also I sit on the CAW council WCB committee which represents workers across the province for the CAW. Also, in Niagara alone, I'm here on behalf of approximately 10,200 CAW members.

Smokey Mилоjevic — I haven't got his pronunciation right, but I'm working on it — is a member of Local 707 Ford Oakville. Smokey is a WCB representative in the Ford Oakville plant and he represents 4,700 workers there. He also is a member of the Niagara Workers Committee for WCB and Health and Safety. George McDonald is an injured worker and he works out of the Ford Oakville facility.

I am here on behalf of the above-mentioned groups to totally oppose Bill 99 and the undemocratic manner in

which the Harris Conservative government, through Bill 99, proposes to gut protection to injured workers that the Workers' Compensation Act was designed for since its conception in 1914, with the report of the Meredith commission.

The initial principles that were established were that workers have a right to be compensated for injuries at work. The Meredith commission established that employers had the responsibility to compensate workers in their employment.

Workers also, at that time, gave up the right to sue. I know that in the presentations today we've heard these comments, but I think it's worth saying again and maybe it'll sink in, and maybe you can go back to Harris and let him know.

The Meredith commission established the following principles: employee funded collective liability; no-fault system; security of benefits; administration by an independent agency; and removal of litigation rights.

Bill 99 erodes every one of these principles for injured workers and totally enhances the employer's power over injured workers by reducing benefits and giving them back to corporations. This government's plan, with very little fair public consultation, makes their so-called Common Sense Revolution a total sham being put over workers in Ontario.

I plead with you to recommend to the government to kill Bill 99 and start a procedure to have total fair input from injured workers and their representatives.

It's obvious you've already talked to the business community because Bill 99 represents the business community, but not the injured workers.

The government was to be the go-between for workers and employers for both to have equal input and consultation with both sides.

With Bill 99 and this unfair government this is not happening.

Six days across the province and a few days in Toronto is totally unacceptable. In our last presentation that was our thrust. We were up front with our MPPs and we were up front for the last year. We wanted more public hearings and we wanted them in Niagara also.

What Bill 99 is doing is rolling back benefits to workers, disintitling some and limiting entitlement and restricting the rights to appeal.

This has been stated since I've been here this morning, but it's worth saying again. This unfair government talks about a financial crisis in the WCB through an unfunded liability that refers to future debts and that the Ontario WCB is in bad financial shape. This is not true. The Ontario WCB is in better financial shape than it has been in for years. The Ontario WCB never borrowed money. The Ontario WCB is not in debt. The Ontario WCB payout in benefits has fallen to the lowest rate in 10 years.

Today Ontario WCB is making more money than ever before in Canadian history. In 1995, WCB had a surplus of \$510 million with thousands of employers in the province paying into the system with \$2.5 billion a year.

Employers received \$350 million in rebates from WCB last year. Employers' bad debts cost the WCB system \$173 million. The unfunded liability, without any changes, is projected — and it's been mentioned before — to be completely paid off before 2014 without any changes to WCB act.

Does this sound like a crisis? I don't think so. Some would like us to believe it is.

Also, it's worth stating again that Bart made the statement on job creation, and I think it has to be said that if the unfunded liability was going down because of job creation, and if job creation was a goal the government took, then that would be good. You get the casino workers covered under workers' compensation, the banks, the insurance companies and a lot of the people that just aren't paying their fair share of the rates, then that would be even further advantageous to it.

One of the many alarming, unfair things that Bill 99 does to injured workers is lowering the benefit rate from 90% to 85% and basically handing it over to employers, and that's a sham. The deindexing through Bill 99, which we touched on 20 minutes ago, will take billions of dollars out of the permanently disabled.

#### 1600

There is one example of the indexing I'd like to discuss. I had an injured worker scheduled to come but he just couldn't make it. He's allowed me to use his name. He's a real person. I won't give you the claim number. His name is Enzo Ventresca. He is age 51 years old now. He lives in Welland, Ontario, and he's a CAW member and he had an industrial accident in 1979.

Enzo had an amputation of his right arm. His disability award through the WCB is 65%. That amount equals, in today's dollars, \$1,450. At age 65, through deindexing of Bill 99 using today's dollar, the buying power will be \$998.09. This is a loss of benefits due to Bill 99 which is 19.99%. Total loss through Bill 99 is \$57,765.59. That only takes it to age 65, and beyond that it would be greater. This is another very cruel, reckless, unfair scam being produced by Bill 99 and should not be allowed to happen.

That is just one person and in that there's a billion-dollar money grab from the permanently disabled.

Another unfair thing that Bill 99 will do is limit occupational stress, chronic pain, limit soft tissue injuries, and limit repetitive strain injuries.

I have here today George McDonald. He has carpal tunnel in both arms. Under Bill 99 an injury of this type could be disallowed, be given limited entitlement, or this type of injury could be undetected for a period of time and be disallowed by Bill 99 through time limits on establishing a claim. This is another unfairness that Bill 99 does to injured workers now and workers injured in the future. George still suffers from pain and discomfort. This is more unfair and reckless legislation of Bill 99.

With Bill 99 eliminating vocational rehabilitation through the WCB, it will mean poorer return-to-work plans for injured workers, throwing them in the hands of the employer. This leaves injured workers very vulnerable,



and this says nothing of the job loss throughout the province at the WCB. In St Catharines alone, this could mean 30 jobs in the vocational rehab and I understand it's 60 or 65 through Hamilton and Niagara, total.

Injured workers need the WCB vocational rehabilitation. We know it is needed for most employers to actively try to return injured workers. That active WCB presence is needed.

This is the beginning of giving the WCB piece by piece to the private insurance companies which is a dangerous road for injured workers.

Just on that part, at Dana, where I work, we're pretty successful in returning people to gainful employment, but it's only because it's financially advantageous for the company to work to get the people back to work. When we go to our private insurance company for non-compensable injury, we have a lot of problems returning people back to work, and without a vocational rehab program in Bill 99, we're going to have a lot of problems, because in working with the insurance company, it is a different kind of entity. It's part of the company.

This bill is too massive for a 20-minute presentation. Depending on who you talk to determines what kind of interpretation you get out of it, and if you pull something out of Bill 99 and read it with five other people, you get five other interpretations of where it's going to be. That's one of the other dangers of rewriting the Workers' Compensation Act so drastically. There's going to be so many different interpretations, and whose interpretation is going to be the final result?

It will strip \$15 billion from future benefits to injured workers by deindexing benefits, eliminating benefits for chronic occupational stress and chronic pain, cutting of benefit rates to 85% from 90%, restricting WCAT of its independence, putting time limits on appeals, putting workers on probation to receive benefits, giving employers total control of vocational rehabilitation if they feel like it, allowing employers to have private medical information. It will further allow employers to hide workplace injuries and allow working conditions to be more unsafe.

I have to say once you railroad Bill 99 in with the few changes that Bart said might be there, you'll go after the occupational health and safety and cut that, and where will workers be?

What workers need in this province is an improved workers' compensation system:

(1) A safe and healthy job, safety in the workplace so that workers can work and contribute to a society without fear for their health and security, enforcement of safety standards;

(2) A workers' compensation system that guarantees the right of workers to full compensation for workplace injuries and the right to return to a meaningful job;

(3) Maintenance of a publicly administered, not-for-profit system funded entirely by employer funds, as legislated in 1914 in the Meredith commission;

(4) Workers' compensation coverage for all workers, including bank and insurance workers and independent operators;

(5) Equal representation for workers on the workers' compensation board of directors, which you guys got rid of; which was a go-between for labour and business, I feel.

(6) Full cost-of-living protection for injured workers' benefits;

(7) Adequate recognition of injuries based on exposure to occupational diseases, including occupational stress overload;

(8) End the experience rating system that encourages employers to hide accidents by not reporting them and pressures workers to return to work while injured.

I don't know if I'll get a chance to say it, Bart, you mentioned to the young woman that there's a youth awareness program. I think you've got a big job ahead of you in Niagara with part-time seasonal workers in Niagara Falls. There are a lot of unsafe conditions in the Falls and it's worthy of your getting active in that youth awareness program.

Also, Bart, you said — and I speak to your committee — there will be some amendments to Bill 99, in one of our meetings, and I welcome that. I hope it's in a positive way, but you still should be going and killing Bill 99 and going to more public hearings and hear both sides of the issue.

I can tell you right now I'm here on behalf of my union, my local and we will be present in the Niagara area to fight it, and also our members who lose or come up short with Bill 99 will be visiting your office, Bart, if they're in your area. I can guarantee you that.

The following pages were unanimously passed by CAW locals in the Golden Horseshoe area, and I'm not sure if the Golden Horseshoe goes to Oakville, and that includes Oakville.

**Mr Bisson:** I take it one of you work at the Ford plant.

**Mr Smokey Milojevic:** We both do. I'm George's representative.

**Mr Bisson:** I'm just curious, because I guess a couple of years ago I was talking to somebody from the Ford plant and they were indicating there seems to have been some kind of difficulty with the return-to-work policy that Ford — now I know Ford is supposedly one of the model employers in Ontario; quality is job one, after all. How does that actually work? How does the return-to-work policy work?

**Mr Milojevic:** I think that could best be described by George himself, and he'll tell you exactly how the return to work works at Ford, and maybe some of the horror stories he went through, coming in and going home and coming in and going home.

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**Mr George McDonald:** First off, I'm an employee of Ford for 24 years. I never filed a claim for compensation until my 23rd year or 22nd year, and I'd never been injured on the job, thankfully. Going to Oakville was a whole new scenario for me after 20 years at the Niagara plant, which closed down. What happened was that after two years on the job there, I developed carpal tunnel. My doctor gave me a couple of letters to take to work, and

eventually they just basically told me when I presented the letter: "We don't have anything for you. Stay home."

That sent me to the compensation board. I stayed home for a couple of months, took physiotherapy and stuff like that. I went back to work with the job creation program. I was put on a job for two weeks of limited-duty work, and what happened was that eventually it was scaled up to more work, more work, more work. The representation was limited at that time. Smokey wasn't in his position at that time and we didn't have a placement representative with the union. The whole placement situation was handled by a foreman. I was sent out from labour relations to the floor. It's a foreman, who has no training whatsoever, who places you on a job.

**Mr Bisson:** So quality isn't job one.

**Mr McDonald:** Quality is not job one. It's numbers; get the numbers out and that's it.

This is my situation. Another month on the floor aggravated the situation worse and I had to go off at that time. I felt I was forced into a surgery situation. After another few months I returned to work again and they told me my restrictions were too severe, to stay home. After another couple of weeks at home, they called me up and I went back to work three days before Christmas. After Christmas I dropped my restrictions, and now I'm working again, thankfully. But it's a poor situation that we're in there, in my opinion.

**Mr Maves:** Tim, you talk about rebates for WCB last year for employers. I wonder, at your plant has the NEER program helped to make your employer pay more attention to health and safety?

**Mr Lambert:** I think I said we have a fairly good return-to-work program only because it's costing them and it's advantageous for them to get on board and get people back to work.

**Mr Maves:** Okay. How long have you had that program?

**Mr Milojevic:** If I could just interject, we have a new program also with Ford. Ford's main objective is to get relief. I'm sure this committee has heard of L.A. Liversidge. That's who represents Ford, so let's not kid each other here. That's who represents them, and their whole goal is the NEER award system. That's their main objective.

**Mr Maves:** Right. When the system was brought in, it's a financial incentive to have better health and safety in the workplace.

**Mr Milojevic:** Liversidge's main concern appears to be to make sure that nobody ends up on compensation. I would know that, because I represent the people at Oakville. I see on a daily basis where claims are denied because of what Liversidge puts on their form. That's understandable: The more claims they can have rejected, the more claims they can get through the SIEF fund, the better they appear. When you ask about the NEER and the SIEF, if we were to see them eliminated, that would definitely help the situation with injured workers.

**Mr Lambert:** I give my employer a little bit of credit but I'm not giving them all the credit. Part of the reason

they have a return-to-work program is because the legislation in the Workers' Compensation Act forces them to. What Bill 99 is doing, as far as I'm concerned, is taking that clout away. It's taking it away and saying, "Here, you deal with it," and if we have any problems, we can try and get involved. I don't know. With so many unknowns in everything you've got in Bill 99, it's hard to make a call on anything, because you don't know who's going to interpret what how.

**Mr Agostino:** You made reference in your presentation to amendments that will possibly be brought forward by the government.

**Mr Lambert:** We had some discussion with Bart in his office on one of our visits. We've been really upfront with him, and it shouldn't be any surprise about how angry and disappointed and frustrated we are. We talked with him, and he said that Bill 99 was going to go through and there were going to be amendments.

**Mr Agostino:** There will definitely be a ton of amendments brought in from both opposition parties, but the reality is that unless they're brought in by the government — their track record in the last two and a half years is that after a bill has been brought to committee, every single opposition amendment brought forward has been rejected. You may pick out one or two examples, but I would say the percentage is in the high 90s of rejection of opposition amendments. I certainly hope the government sticks to their word and they will bring in significant amendments, as you were promised.

**Mr Lambert:** Our whole thrust is that Bill 99 should be killed and there should be a fairer system of talking with people. We participated in the royal commission. We participated in other changes in the act. We feel that this six-day road trip on Bill 99 — with rewriting the whole thing, changing I don't know how many acts and increasing them, having no fair labour representation on the board of directors at the board, interpretations of Bill 99 are going to be really bad. Scrap Bill 99 and call another royal commission and have a fair one, like what was being done before.

**The Chair:** Gentlemen, thank you, on behalf of the members of the committee, for making your views known to us today.

#### ST CATHARINES PROFESSIONAL FIRE FIGHTERS ASSOCIATION

**The Chair:** Would the representatives from the St Catharines Professional Fire Fighters Association come forward. Good afternoon, gentlemen, and welcome.

**Mr Ross Smith:** Thank you very much. My name is Ross Smith. I'll be the spokesperson for the St Catharines Professional Fire Fighters Association. I am a firefighter from Mississauga, Ontario, and a representative of the Provincial Federation of Ontario Fire Fighters workers' compensation committee. I'm going to ask Mr Dave Wood, the workers' compensation rep from the St Catharines firefighters, to read his statement into the record.



**Mr Dave Wood:** Members of the standing committee, my name is Dave Wood, and I am here today to represent the St Catharines Professional Fire Fighters Association, Local 485. Today I'd like to speak to you about the drastic changes to section 13 of the Workers' Compensation Act, regarding restrictions to chronic pain.

When I read section 13, I was disturbed and very disappointed. As firefighters in this province, we accept as part of our profession that we cannot refuse unsafe work and also understand that at some point in our career we may become injured — to what extent? However, we also understood and believed that when and if an injury did occur, we would be compensated.

Members of this committee, you have to understand that there are times when the results of these injuries continue for extended periods of time, and when they do, individual firefighters may not be able to perform his or her duties for these prolonged periods.

Now you are saying that the compensation will be limited to specific time restraints or, as the board puts it, "normal healing times," when these exact injuries arise out of and in the course of their employment. Understand that firefighters and workers will be forced to return to work when they are not ready, thus placing himself or herself, and the communities across Ontario, at great risk.

I became a firefighter six and half years ago. In my second year I was injured while on duty and was incapacitated for approximately 30 days. Being new to my profession and having been questioned by the corporation of the city of St Catharines regarding my injury, I felt that it was my responsibility to return to work. As previously stated, I sincerely believed if my injury recurred, the corporation of the city of St Catharines and the Workers' Compensation Board would look out for my welfare.

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However, over the next seven months I experienced recurring, documented complaints relating to my original injury, until I was again incapacitated while off duty. When I applied for benefits I was denied by the Workers' Compensation Board. They stated that no pre-existing condition was present and that it did not arise in and out of the course of my employment.

To this day my condition is still present. If you pass these changes, you are stating to me and every other worker across Ontario that the Workers' Compensation Board, not the treating physician, has the ultimate and final decision, thus punishing us for our work-related injuries while praising and rewarding employers for reduced accident costs.

In closing, I implore that you withdraw these changes to section 13 of the Workers' Compensation Act, allowing every firefighter and worker in Ontario to keep their dignity and self-respect while trying to recover from the work-related injuries they have sustained.

Ladies and gentlemen, I thank you for this opportunity to speak to you this afternoon. Mr Ross Smith will be speaking on several topics on behalf of the St Catharines Professional Fire Fighters Association, Local 485.

**Mr Smith:** Bill 99, the Workplace Safety and Insurance Act, as it is presently written will severely limit, restrict, reduce and eliminate benefits for any firefighter or worker who has the misfortune to be injured.

This bill in its current form is nothing short of a punitive attack on workers' rights to fair compensation for on-the-job injuries and will allow the employers the right to intimidate, slow the injured worker's claim, free access to medical information and, with the restraints to WCAT, fair and impartial hearings.

Firefighters, as you've been told, work in a very high-risk and hazardous profession. Every firefighter in this province can expect to be injured while on duty at some time during their career. During an average year we have a 50-50 chance of being injured. As Brother Phillips indicated to you earlier, the statistics are growing that you have a chance of being hurt once every four years. It is a documented fact that among professional firefighters in North America, on average, 80 to 100 firefighters per year die in the line of duty. It is one of the most hazardous professions.

In this province, firefighters do not have the right to refuse unsafe work. This bill is an attack on every firefighter's right to fair and reasonable compensation.

Due to time constraints, I'm only going to briefly allude to some of the concerns we have with Bill 99.

Mental stress in the fire service has become known as critical incident stress and is known also as post-traumatic stress. Under the proposed subsections 12(4) and (5), claims for stress will be virtually eliminated, except for mental stress that is an acute reaction to a sudden and unexpected traumatic event. It appears that only physical injuries are going to be recognized by Bill 99 and mental injuries will not be considered injuries.

Firefighters not only see sudden and unexpected traumatic events regularly; they confront stressful situations that build up over time, and many suffer from what is known as critical incident stress.

Firefighters deal with hazards every time they answer an alarm. This is a known fact. What is not commonly known or understood is the fact that firefighters answer more than just fire calls. We do more than fight fires. We attend, on a very regular basis, many other types of emergency situations: accidents, murders, suicides, medical calls that are sometimes quite disturbing, hazardous materials incidents, water rescues, ice rescues and other types of events. The firefighters work in an environment involving dangerous situations, uncontrolled environments and unsanitary conditions in all types of weather.

Our organization is a paramilitary style of command and control, and often many firefighters feel that senior staff officers give little sign of appreciation or recognition.

Often there is a lack of control over a situation and we are expected to be lifesavers. I believe it's hard for you people to understand what it's like when you fail to save a person from a fire or have a child die in your hands, as has happened to me. That is a sudden and traumatic event.

We are exposed to destruction, injuries, illness and death. It has a long-term and definite effect on each and

every firefighter. Over time, these things build up and some of our members do break. I've got two members of my own local, one of whom I've worked with for years. He became an officer. Then one day I was told he was off sick and they didn't know what happened to him. Eighteen months later, I got a phone call from him. He asked me: "Smitty, can we meet at a restaurant for a coffee? I want to talk to you." He wouldn't meet in the firehall; he couldn't. He said he went into headquarters and he was giving up his rank; he was going to go back to be a firefighter. He couldn't handle it any more. He said: "I was at headquarters. I was going to meet the deputy chief. The alarm went off, the pumper and aerial were rolling out to a call. The sirens were going." He said, "I don't remember the next six months." He said, "My wife would tell me that when I'd hear a siren, I'd go hide." He broke. To this day, he's not a firefighter on the floor any more. It does happen.

I have another member of my local who — actually, the baby died as a result of the drowning of a very famous Canadian athlete. He can't handle child medical calls any more. He's off the job.

The rate of divorce is very high in the fire service. Many turn to substance abuse and others handle it in different ways, like I've mentioned. Many firefighters do not share or talk openly with family members about stressful events that happen at work. Often, our friends tend to be other firefighters and we socialize with other firefighters. We hide our feelings from our peers because we do not want to appear weak. We make jokes and cover incidents, excuse the pun, with black humour. You may remember a few years ago a bus that went off the Queen Elizabeth Way. It went into a fence and a number of people on that bus were impaled. That's commonly known now in our local as the "shishkebus." It's black humour to cover up the problems we had having to hacksaw people out of that.

Firefighters have the belief that senior management does not acknowledge or care about us. The proposed Bill 99 blanket exclusion of mental stress in subsections 12(4) and (5) is totally wrong. It's difficult now to take a stress claim before the board, and Bill 99 will make it impossible. Not only firefighters but many other emergency personnel — police, paramedics, ambulance attendants, doctors and nurses in trauma units — have documented cases of critical incident stress.

We deserve better from this government. It's our submission that firefighters should have coverage for critical incident or mental stress and that we require this type of coverage, not only firefighters but every worker in Ontario, and not this proposed elimination of this type of injury from the act.

On page 4 we're talking about return to work, or suitable employment. Suitable employment in the fire service is often referred to as modified duties. In the fire service, we have a lack of modified duties for firefighters. In many smaller departments they would be almost non-existent. Very few locals have any agreements or wordings in collective agreements that provide for modified duties.

Thus, the modified duties provided are often not meaningful work and do not reflect the injury itself. In many cases, the work site is not altered to suit the injured worker.

Just recently, I had a firefighter who brought a letter to return to modified duties. It said right in the letter "no repetitive stair walking." So what do they do? They put him on the third floor of the fire headquarters in an office with no phone. His supervisor is on the second floor. He estimates that in two days he walked up and down 700 stairs. He's back off the job. When he reported it to the deputy, he said, "I'll speak to your supervisor about it." When he asked him about it, the deputy hadn't talked to him. He'd gone to the chiefs' convention. That's how they care about us.

In many other cases, the corporation or employer only offers modified duties "somewhere within the corporation," with the added proviso, "Get him back, the sooner the better, to keep costs down." Firefighters in Ontario are schedule 2 in the current act. When you're off injured, you continue to receive your salary and benefits, but you pay an administration fee to the board, somewhere close to 17%, so the faster they can get you back on modified, they're saving money. The bean counters are sitting there thinking: "Let's get him back. We'll have him driving a Zamboni at the arena. We'll still have to pay him a firefighter's salary, but at least we're not paying 17% above that." To keep their costs down, they try to rush you to get back.

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Our experience shows that there's little concern for the injured firefighter and his or her rights. The only concern is to get them back somewhere, anywhere, as soon as possible. If the firefighter can't get to see their own doctor, try and harass them to use the corporation doctor.

The current act, while it's not perfect, has some checks and balances. The firefighter can work with the employer, the WCB rep for vocational rehabilitation and the firefighter's WCB rep to achieve and place the injured worker, with some dignity, into a suitable modified position.

Under the proposed Bill 99 changes, the employer will have the right under clause 40(1)(a) to contact the injured worker "as soon as possible after the injury." That's a pretty open-ended statement. Without any defined time to be contacted, do they give you 24 hours, 48 hours, seven days? "As soon as possible."

The DCs, or district chiefs — I'm using terminology you might not understand — have fax machines in their vans. Maybe we can fax them the return-to-work order and they can pin it to him while he's being placed in the ambulance. No kidding, it can happen. Maybe they'll give him the brief and the chief will come and visit him in the hospital and pin it to his chest then.

That type of wording suggests all types of harassment scenarios. Even under the present system, there are cases of firefighters being contacted within days of their injury to provide medical documents that will enable them to return to modified duties.



I was at work on a Friday, the beginning of my week-end shift. As the workers' comp rep I get the injury reports. I'm reading an injury report on an incident that happened on Wednesday afternoon, a probationary firefighter who dislocated his shoulder at a call. As I'm reading the report, the buzzer at the front door's ringing. I went down to answer the front door and there's a firefighter in a uniform with his arm in a sling in one of the department pickup trucks standing there. I said, "Oh, you're such-and-such." He said: "Yes, I am. How do you know?" "I was just reading your injury report. What are you doing?" "I'm back on modified work." This is Friday. I bet the board didn't even know he was off. He's driving around in a pickup truck with his arm in a sling, getting the mileage out of the trucks. What kind of meaningful work is that?

With this proposal, now there will be no timing of the return to a modified position and very little, if any, medical review prior to the return. The corporation will have their medical file as per subsection 36(1). You've got to ask questions like, what, if any, time will be provided for physiotherapy, or what medical treatment will exist under this proposal? Right now, at least the workers' comp rep and the Workers' Compensation Board will meet with the employer and the injured worker to set up some type of voc rehab plan that'll provide for physio.

Certainly with the elimination of vocational rehabilitation and its replacement with the labour market re-entry plan system, there have to be many unknowns. Job deem-ing is one scary aspect, the phantom job.

The bottom line is going to be that firefighters will attempt to return to their normal duties while they're still injured or not even report the accident or injury. This will place themselves, their co-workers and the public at greater risk.

The proposed changes to the return-to-work section of the act are opposed by the firefighters of Ontario. The employer will use this section to harass our injured firefighters and place our injured firefighters in unsuitable and unmeaningful jobs. Firefighters themselves may not report the injury in a vain attempt to avoid this return-to-work scenario. The firefighters' position is to leave the current system of checks and balance of the current act in place.

Page 6, medicals and functional abilities: The firefighters oppose these sections of the proposed act. Employers will use every opportunity to gain information, through these proposed sections, on you and your condition and no doubt will use it down the road against you or to get rid of you. The proposal opens the door for unlimited employer abuse. Every injured worker can be required to submit to a medical examination by a doctor chosen and paid for by the employer. I think it was stated earlier today, "He who pays the piper calls the tune." The worker who does not cooperate will be faced with the cutting off of benefits, subsection 35(2).

These proposals are a total affront to all Ontario workers' basic rights. Think about it. You get injured and you lose all your rights to medical confidentiality. You will have to submit, upon the employer's request, to provide a

functional abilities report. We're not sure what's going to happen with the functional abilities report; that's open-ended as well. It's our position that many injuries will go unreported due to this proposed section.

The true reality for all injured workers in Ontario will be — there's a line missing, which I would like you to write in your brief; it got missed by my typing — that if the employer wishes not to re-employ you, and you cannot return to work, you'll lose your job. You'll be gone. So get injured and lose your job. That will be the bottom line, and it does happen. Remember that they will have the right to gather all evidence they will need to do so with the new Workplace Safety and Insurance Act.

Firefighters adamantly oppose these sections of the proposed legislation.

Page 7, the Occupational Disease Panel: The proposed bill will eliminate section 95 from the act. This will in effect kill any chance that firefighters will receive benefits from the IDSP report no 13, the former title of the ODP. This is the report I'm talking about right here: Report to the Workers' Compensation Board on Cardiovascular Disease and Cancer among Firefighters, September 1994. It's been sitting on a shelf at the board since then. It's never been enacted.

Firefighters for more than 30 years have been attempting to achieve coverage for what we maintain are occupational diseases of firefighting. Firefighters, as evidenced by the recent Hamilton Plastimet fire, risk exposure to many products of combustion, chemical emergencies and hazardous material situations. That recent fire in Hamilton brought it to bear. Firefighters are still exposed to that. They tell me that in the neighbourhood the grass has gone brown and the trees are dead. They've even stated that parts of their trucks have fallen off because of the chemicals there. We'll get them repainted and fixed up, but we aren't going to worry too much about the firefighters because we can replace them fairly quickly.

Many studies have recognized that firefighters have, due to the nature of their jobs, higher rates of heart disease and cancers than the average person. That's what was recognized in this report. IDSP report 13 recognized this fact, and recommends that firefighters should receive presumptive coverage for brain and lymph cancers. The report currently sits at the board and has not been acted on.

Firefighters demand this coverage, not the reverse. Kill the ODP and any hope of receiving it is gone. We deserve better from this government. The ODP is a valuable asset to the people of Ontario. It needs to continue and be independent of government control.

The work of the ODP in all likelihood has saved the Workers' Compensation Board, the employers and the people of Ontario money by helping to identify a problem and taking the steps to correct the problem and prevent it from happening again.

But what does Bill 99 do? It takes a giant step backwards. Firefighters and Ontario workers will continue to suffer with diseases from the workplace and the government of the day refuses to acknowledge it. Employers will

no longer have to fight these claims because they will not exist, and therefore they will save money. The firefighters and injured workers will be on employer benefits, which will be cheaper and easier to handle, control and eliminate. The firefighters oppose this backward step of Bill 99 and request that you amend this bill to maintain the ODP.

Due to our time constraints, we have not been able to state our position on other areas of concern contained in the bill. Not covered in our presentation are objections to the reduction of benefits from 90% to 85%, chronic pain, deeming of workers into non-existent jobs, privatization and the end of vocational rehabilitation.

In closing, we wish to state for the record that Bill 99 is nothing more than an attack on the injured working people of Ontario. What the government does not realize is that every working person who is injured is just that: a person, not a statistic. That person is your family, your friend, your neighbour, your co-worker. They are not just a number. They are a real person. Every person out in that room there who is injured is a person, not a bloody statistic.

The Workplace Safety and Insurance Act cuts injured workers' benefits, does nothing to reduce injuries, makes it more difficult for the injured worker to appeal or defend their claims. I don't know how a person with English as a second language is going to deal with it. You miss crossing one little "i" or forget to dot an "i" on a form and you're out of luck. A person who doesn't understand is really going to be out of luck — all the better for the employer, because now they won't have to deal with the claim. The bottom line is greater benefits for the employer and less for the injured worker. To this, the firefighters say shame on this government, when justice and fairness for the injured worker has been replaced by the profit and loss bottom-line of the corporations.

As was previously stated, I represent not a bad-sized association, or union, if you want to call it that, and I'm a proud union member. By and large the members of my union have been Conservative voters in the past few elections. That ain't going to be guaranteed next time, I assure you. You tried to screw us with Bill 84 and you're trying again with 136 and with Bill 99. You ain't getting our votes.

**The Chair:** Thank you, gentlemen, for bringing your case before the committee this afternoon. It's appreciated.

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#### EMPLOYERS' ADVOCACY COUNCIL, GOLDEN HORSESHOE CHAPTER

**The Chair:** I now call upon representatives from the Employers' Advocacy Council, Golden Horseshoe chapter. Good afternoon, and welcome.

**Mr Edward Henrie:** Thank you very kindly. My name is Edward Henrie. I'm the Golden Horseshoe chapter chair of this division. With me are Julie Collie, who's also a member of the executive, and also Mr Joseph Bairaido. You have before you the Golden Horseshoe chapter's brief. What I would like to touch base on to begin with,

just briefly, are definitions and some general benefits regarding the areas I'm concerned with.

Being actively involved as safety manager in WCB issues and chairman of the Golden Horseshoe chapter, representing some 228 small to medium-sized businesses, we wish to speak on several areas of concern regarding the forthcoming changes. Holding the position of safety manager for a local manufacturing and construction installation firm, I must point out that one key area this committee and government should not overlook is the definition of "accident" and its relationship to subsections 12(2), the presumption of an occurrence of the accident, and 21(1), the worker's claim to be filed within three days of the accident.

I wish at this time to share with you an example of an accident that occurred at one of our job sites the other week. On Tuesday, July 29, at approximately 2:30 am, a worker was in the process of fulfilling his duties in changing a propane tank on a scissor lift. During the changing of the tank, the worker did not notice that the main valve of the new tank was fully open, and in the process of connecting the coupling unit, and without wearing the proper protective gloves, sustained a burn to his right hand. As the leaking still persisted, he then proceeded to readjust the connection with his left hand, again sustaining a burn. It should be noted that just three days prior to this incident all workers involved with changing propane tanks were reminded of the proper protective equipment that should be worn.

Some may question why I'm introducing this item to this committee. We as an employer have an obligation to report accidents immediately upon learning about them, and this also falls in under workers' compensation. In this aforementioned accident, the worker did not immediately notify his supervisor that he had sustained an injury. He completed his shift at approximately 7 am that morning and left, still without reporting it. What we've found afterwards is that later that Tuesday morning, due to an increase in pain and blistering that occurred from the burn, he did go and seek outside medical attention, which was now considered to be a first-class burn to both hands. However, it was not until Friday evening, August 1, some three and a half days later, that he finally returned to the job site to report the injury to his night-shift supervisor, and then became quite irate over the response he received regarding not reporting the injury.

One concern I have as a safety manager, and I always stress the point, is that if you have an accident, report it immediately. Even if it's just documented, the thing is we're aware of it. Here again, if you seek outside medical attention, please notify us. We are all familiar, and members of Parliament may not be aware of it completely, but we do receive letters from the board sometimes indicating that we are subject to fines because we have not submitted the complete accident forms.

In a situation like this, I did not actually learn about this until August 3 when I received a phone call from our site superintendent asking what I knew about it. I said, "Absolutely nothing." So it's almost a week and we are



still not even advised of it, even though he had gone to the job site on Friday, the 1st.

Although the government does not really feel that it needs to fix the definition of "accident," in cases such as I have just explained, such as injuries, burns and so forth, the same as critical injuries as per the Ontario health and safety act, my feeling is that the worker should be held responsible to ensure that they report this type of injury. Obviously it is quite different if someone should fall and land up breaking a leg or possibly injuring themselves on a piece of equipment or whatever and an ambulance is called. That is something that quite easily can be dealt with. The unknown factor is the minor situation, such as I explained here, that no one hears about until many days later.

The other thing is, with our construction end of it, the area we deal with is a lot of casual construction areas where it could be a weekend shutdown, it could be a two-week shutdown or maybe it could be a six-week shutdown. We are hiring the individuals from the various trade union halls. We have no idea who is coming out to the site, their general health condition, whether they're quite capable of fulfilling the duties of the job that we're planning on hiring them for etc.

The other concern here is, I know the board is looking at waiving the three-day grace period. I am not necessarily in complete fulfilment of that and maybe do not feel it's necessary. The one thing, though, that I would ask is that the board certainly look after situations such as I have described, that if there is an immediate nature in an accident such as there is here, any delay in reporting this should be considered, and the worker himself should be reprimanded, if need be, in that instance.

The second area that I would like to talk about from the construction aspect of it is that, as I mentioned earlier, we're dealing with the various trade union hiring halls. I feel that the government in its hearings committee should review the practices of these organizations. In a lot of cases, they should be considered the same as temporary placement agencies or employment contractors. We do not have any jurisdiction with them. The unions themselves, the union stewards and the business representatives actually the ones who are placing the workers out on the job sites and they are spreading —

*Interruption.*

**The Chair:** Order, please.

**Mr Henrie:** They are placing them out at the various job sites, depending on the number of workers who are available at that particular point. Now when I'm referring to trade unions here, I'm not referring to the automotive industry or anything like that. This would be in the case of millwrights, iron workers, electricians, boilermakers etc. These are not the normal unions that a lot of people hear about and figure, "Okay, this is a union."

*Interruption.*

**Mr Henrie:** At this time, it is our feeling that the employers themselves and the unions should be brought into the employers' role. They are responsible for all the bene-

fits, the placement of the workers and the distribution of the workers around the site, not we as the hiring employer.

*Interruption.*

**The Chair:** Order, please.

**Mr Henrie:** In order for this reform process to work as a complete package, the definition of "accident" must be redefined by this government to ensure its success in the insurance program, and that all parties — the employer, the worker, medical practitioners and the agencies — be involved with the employment process and be held responsible to participate in the early return to work and the re-employment of workers.

At this time, I would like to turn the microphone over to Mrs Julie Collie. She will speak and then we will take any questions at that time.

**1650**

**Mrs Julie Collie:** Thank you Ed. Basically, I'm a human resource professional first, and came into WCB and health and safety later. One of the issues that I have to deal with is making employers realize the value of their human assets, and I agree somewhat with some of the previous presentations in that area.

*Interruption.*

**Mrs Collie:** You're valuable. One of the things that I'd like to talk about now is the family physician's role in timely return to work. We as employers recognize that the vast majority of injured workers are honest, hardworking individuals. Unfortunately, the small percentage of those workers who abuse the system have fostered an adversarial environment with all workers and particularly organized labour groups. This, in turn, has resulted in some injured workers not receiving the benefits they deserve on a timely basis —

*Interruption.*

**The Chair:** Please, sir.

**Mrs Collie:** — only by educating the medical community regarding workplace injuries and diseases and making them aware that they are the logical facilitators of restoring workers' self-esteem and returning them to productive employment.

Physicians should recognize that they are not helping their patients by aiding them to view themselves as disabled. By coming to terms with the facts of their injury, workers can begin to heal. Employers would be more amenable to allowing the claim if there was an honest declaration of previous injuries or underlying conditions, which would not affect the workers' benefits and would provide a fair cost relief on the claim.

Is the family physician's role a conflict of interest? Too often, employers who are proactive in developing return-to-work programs that the board approves of, given the nature of the injury, are blocked because family physicians will not provide restrictions and keep their patients off work without any physical findings. As a person who's responsible for developing modified work, I can't in all honesty bring back someone to modified work, for fear of injuring them further, unless I get some medical restrictions from the family physician.

Employers can only assume that the family physicians are supporting their patients' wishes, and this is where we have a lack of education and cooperation. We in the present system are putting these physicians in an impossible situation. They are sworn to protect and serve their patients. They are required by law to maintain the confidentiality of their patients' records. Often they have had a long relationship with their patients and their families.

We suggest that when an injured worker is absent from employment or is not participating in a modified work program for more than 10 days, the claim should be referred to an independent clinic where there are physicians experienced in workplace injuries and they can facilitate a return to work.

One of the questions we pose is: What is the OMA's position on these issues? Have they indicated that they will endorse the physicians providing the information? Are you creating unenforceable law?

In dealing with non-conformance and consequences, fines may be imposed on employers and injured workers for non-compliance. The apex of the return-to-work triangle is the family physician. What sanctions will there be for non-compliance for the family physician? Will family physicians be required to reveal medical information which has a bearing on a possible underlying condition?

Bill 99 says, "The board may require injured workers to attend another doctor." Whose opinion will prevail? Will the family physician still be considered the primary care provider? There should be stronger guidelines to the adjudicators to ensure that a specialist's opinion or the regional medical adviser's recommendations regarding return to work and capabilities should not be overruled by the family physician.

Physicians' payments should be held until they provide the reports, test results or other information that relates to the fees. Some specialists see so many patients, some every 15 minutes, that they are months behind in their reports. This creates a lot of frustration, both for the injured worker and for the employer, because everything is at a standstill. There's no progress made on the claim and every party gets frustrated.

A refusal to submit to a medical evaluation may result in suspension or reduction of benefits, according to Bill 99, but I think it should read "shall result." It should be made clear to the injured worker that physical restrictions apply to their home life and not just at work. I had an injured worker with carpal tunnel who continues to knit daily. Another case with shoulder restrictions continued to sand and refinish antique furniture. This is to the benefit of the injured worker. Unless they understand that these restrictions apply, they won't heal as they should be healing.

We need to share information. In making decisions regarding underlying conditions, causes of accident, residual impairment, there's no co-ordination of complete medical information. This co-ordination would also benefit the worker and protect their safety and their health. In making decisions regarding return to work, medical information should be gained from the family physician, the employer,

the employer's health benefits provider and signed declarations from the worker.

In the general insurance industry, for insureds' claims to be paid, they must provide medical evidence of disability. All medical evidence as it relates to the claim must be available to the insurance company.

Bill 99 says, "A health care worker must provide information regarding the worker's functional abilities.... An employer must contact the worker as soon as possible.... An injured worker must contact the employer about return to work as soon as possible." What does "as soon as possible" mean? Would an injured worker leaving a message with the receptionist constitute contact? If an employer does not receive information of capabilities for three months, and therefore does not contact the worker for three months, would that be considered as soon as possible? As previous presenters have pointed out, that wording needs to be tightened up so that everyone understands their responsibilities.

There's no reference whatsoever regarding the time frame for a health care worker to provide information regarding capabilities.

We suggest that the wording of the above sections needs to be clarified and a time frame stipulated for compliance. Employers are required to report within three days of learning of the accident. Therefore, health care workers should provide information within three days of the request. Employers and workers should contact each other within three days of the accident, and by that I don't mean that they should give them a return-to-work program. I say they should touch base, see how they're feeling, see what their prognosis is, arrange for a comfortable time for them to come and meet with them.

We suggest a comprehensive computer database be established and linked with all the board's departments — too often one department in the WCB has no idea what's going on in the other department — as well as other provinces' databases, private insurance companies and government and welfare roles.

These suggestions are not to take away from the benefits that should be received by the honest, hardworking worker. This is to address the small percentage of workers who abuse the system and make it difficult not only for employers but also for those people with genuine injuries.

In summary, we commend the government's initiative to reform workers' compensation and promote a proactive approach to accidents. I've heard references that the only reason employers are doing some of these things is to cut costs. Employers are realizing now that the best way to cut costs is not to have the claim happen in the first place. As you can tell by the imbalances in the NEER program, many employers have already come to the conclusion that preventive measures and an early return to work are the keys to cost containment.

Many of us have suffered great frustration with the lack of cooperation from the medical community, organized labour groups and workers who view workers' compensation as a social safety net and not the insurance program it was meant to be. We feel that the next great hurdle will be



the education of the medical community and labour groups to foster a self-directed team approach to timely return to work where each stakeholder will benefit: the worker by regaining self-esteem and being productive again, the employer by realizing the value of its human assets and cost containment, and the medical community by removing the "rock and a hard place."

I don't mean to state that we are harsh in these issues. We strongly believe that there is a problem and that only by working together can we resolve it. By working together, I mean the worker, the employer and the medical profession. If done properly, all of this can be addressed without involving the board at all. If you take a proactive

approach to the value of your human assets and look at these people you spent time hiring and training — they have a tribal knowledge of your organization — you must do everything you can to keep them within your organization and keep them productive. Thank you.

**The Chair:** Thank you very much. Unfortunately there isn't time for questions, but on behalf of the members of the committee we thank you for bringing your advice to us this afternoon. It is appreciated.

Colleagues, that's our last presentation for this afternoon. Just to let you know that we begin tomorrow morning at 8:30. This committee is adjourned for the day.

*The committee adjourned at 1701.*

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## **Legislative Assembly of Ontario**

First Session, 36<sup>th</sup> Parliament

## **Assemblée législative de l'Ontario**

Première session, 36<sup>e</sup> législature

# **Official Report of Debates (Hansard)**

**Thursday 14 August 1997**

# **Journal des débats (Hansard)**

**Jeudi 14 août 1997**

**Standing committee on  
resources development**

**Comité permanent du  
développement des ressources**

**Workers' Compensation  
Reform Act, 1996**

**Loi de 1996  
portant réforme de la Loi  
sur les accidents du travail**

Chair: Brenda Elliot  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU  
DÉVELOPPEMENT RESSOURCES

Thursday 14 August 1997

Jeudi 14 août 1997

*The committee met at 0846 in the Holiday Inn, Kingston.*

WORKERS' COMPENSATION  
REFORM ACT, 1996LOI DE 1996  
PORTANT RÉFORME DE LA LOI  
SUR LES ACCIDENTS DU TRAVAIL

Consideration of Bill 99, An Act to secure the financial stability of the compensation system for injured workers, to promote the prevention of injury and disease in Ontario workplaces and to revise the Workers' Compensation Act and make related amendments to other Acts / Projet de loi 99, Loi assurant la stabilité financière du régime d'indemnisation des travailleurs blessés, favorisant la prévention des lésions et des maladies dans les lieux de travail en Ontario et révisant la Loi sur les accidents du travail et apportant des modifications connexes à d'autres lois.

**The Chair (Mrs Brenda Elliott):** Good morning, ladies and gentlemen. The standing committee on resources development is called to order, listening to presentations on Bill 99. We are pleased to be here in Kingston this morning.

**Mr David Christopherson (Hamilton Centre):** On a point of order, Chair: As I've done in every community that we've been in, as few as they are, I would like to again place a motion for the benefit of those who are here. The motion has already been formally voted against and lost, so the Chair, and rightly so, will not allow that motion to be placed.

However, the rules do allow a request for unanimous consent. That means we would set aside the rules and that would then make the motion in order and allow a vote to be taken. To do that, we need the support of the government members. All the opposition members have been on side. Yesterday, we got to the point where there was only one member who had the audacity to formally put his name forward and say he was opposed, and that was Gary Stewart out of Peterborough.

I would hope the government members have had an opportunity to reflect on what they've heard about the damage Bill 99 is doing to the working people of this province and would therefore, on behalf of the injured workers in their ridings and their communities, be

prepared to give unanimous consent to allow me to place a motion that would have us recommend to the government that they open up these hearings, extend the hearings and allow the injured workers of Ontario to be heard. Therefore, Madam Chair, I ask for unanimous consent to place such a motion before this committee.

**The Chair:** Is there unanimous consent? There is not unanimous consent.

**Mr Christopherson:** May I ask who's opposed?

**The Chair:** No, there's no provision for that.

There is not unanimous consent so we'll move forward, asking our first presenters to come up.

*Interruption.*

**The Chair:** Order, please.

QUINTE-ST LAWRENCE BUILDING  
AND CONSTRUCTION TRADES COUNCIL

**The Chair:** We call our first presenters, please, representatives from the Quinte-St Lawrence Building and Construction Trades Council. Are the present? Would you please take your seat at the table. Good morning, sir, and welcome. Please introduce yourself for the Hansard record.

**Mr John Telford:** I've done this before. I don't need to be coached through it.

**The Chair:** All right. That's fine. You know you have 20 minutes then.

**Mr Telford:** I didn't just fall off the truck.

First of all, my name is John Telford. I'm the president of the Quinte-St Lawrence Building and Construction Trades Council, representing roughly 3,000 unionized construction people, covering an area from Belleville to as far as Cornwall in the east.

I feel a little bit awkward sitting here today. I spent some time yesterday preparing a document and going through my documents and I guess I'm going to speak on technical issues concerning the bill. But this morning at the Legion I talked to some people and I've heard some people speak here this morning, and these people are talking out of their hearts and their souls. If you never remember one word I say here today, please remember what these people have said.

We're an affiliate of the Provincial Building and Construction Trades Council of Ontario, representing approximately 100,000 unionized construction workers. Our members perform work in the building construction in-



dustry, such as erection, repair, alteration, maintenance, demolition, as well as the manufacture, assembly, fabrication and handling of construction materials.

We're dependent on workers' compensation. We work in a very dangerous field, as dangerous as police officers, firefighters or anybody else out there. We don't dispatch our people from union halls to have them be hurt. We strive hard for safety. Our members are taught safety. Our fair contractors, and we do have some fair contractors, strive for safety. We don't send our people to work to come home injured. We like them to go to work, work hard, get paid a decent wage, and come home healthy, the same way they left at 8 that morning.

Workers' compensation was formed. There are three basic concepts to workers' compensation: Workers must be compensated for lost earnings as a result of work-related injuries and diseases; workers would relinquish the right to sue for workplace injuries if employers would fund no-fault compensation systems, which we have in place today, which I hope we're going to have in place after today; and the funding would be done on a collective system so that no one employer would be hurt by a tragic injury to a worker.

It was a fair system. It seemed to have worked. There's a lot of bureaucracy in it but we could get through the system, we could get some support for our workers, sometimes limited, sometimes unfair. It's going to get harder with this bill.

The first area I'd like to touch on is your notice of accident. Previous to this bill, a worker could notify his employer if there was an accident; the employer could notify WCB or a physician could notify WCB. After you people ram this bill down our throat, the employee will be the one who notifies the WCB of the injury, but unfortunately he's got to get the forms from his employer, who has the opportunity to coerce him, threaten him or use whatever means he has to deter that claim from going to WCB. And let's not forget the economic times this province is in right now. It's hard enough to get a job; there are not going to be too many people in this province who jeopardize their job by going against their employer. They're going to suffer through it, they're going to put up with the pain, and ultimately it's going to end up killing them and destroying their families.

More bureaucracy, more forms to fill out: In my particular trade, some of our people have problems with filling out forms, language problems. Every nationality in the world probably works in the construction industry in Ontario. What language are the forms going to be in? Where are the people going to get help to fill out the forms? God forbid that the form be filled out incorrectly, because we know where that ends up now at WCB.

There are too many injuries out there that I don't believe WCB is going to recognize in the future. There were some things touched on this morning by speakers either here or over at the Legion, but I think it was at the Legion:

Stress-related injuries.

Injuries not directly attributed to one accident. Asbestos might be one you could think of.

Back problems. In my particular industry they are very prevalent, because over 25 or 30 years in the construction industry there's a lot of wear and tear on your back.

With the time frames in Bill 99, are we still going to be able to go back for injuries that are cumulative? Are we going to be able to get injuries for asbestosis where a man was exposed to asbestos in 1950? I don't think we are. We can't get them now under the bill. I personally have done four asbestosis claims in my local. I haven't had one take less than two years. Out of four, I've had one person who lived long enough to see the cheque.

You're proposing to cut the compensation to 85% from the 90% it's at now. I assume that's a cost-saver to you. It must be. For what other reason would you want to do it? It's a cost-saver to you. I think, somewhere in the feeble mind of whoever put this piece of legislation together, they thought the 5% reduction was going to force people back to work. That's again taking advantage of people's personal status, how their income is. Maybe they're going to be forced back to work because they need that extra money. You're going to get them down to 85% this year, 80% next year and 75% the year after, just like unemployment insurance is doing.

You people have lost sight of the reality that these people are hurt. They cannot go back to work in some cases, not that they don't want to go back to work; they're physically incapable of participating in the workforce.

In my particular trade, the guy will go back to work for monetary reasons. He's got to; he can't live on what you're going to give him now. So he goes back to work and one of my members is working alongside of him. He can't perform his duties. He has another accident, further hurts himself, and the guy or lady who's working with him is hurt as well.

We don't all work in offices. We work in very dangerous situations in the construction industry. We have to depend on the people we're working with, that they have the ability to perform the tasks we're being asked to do. As Mr Gerretsen brought up, I'd like to see in hard-dollar numbers what this 5% is going to save. Is it something like your tax break that we got? I think I got \$37. I don't know what I'm going to do with all of it.

The return-to-work policy in 99 is non-existent for the construction industry. It never has been existent for us. We don't work for people for five or six years; the average construction worker works for a job five and a half months in this province. So your guidelines and stipulations are not going to help any injured construction worker. We would ask in the construction industry that there be another paragraph put in to cover us because of our unique work situation. I suppose that for people like the Steelworkers and some of the other unions involved, where they have long-term relationships with their employer, these things are important. From reading it, as I said, I don't have a lot of insight into it because it really doesn't affect what I've done for 25 years, but I'm sure someone's going to get up and have some concerns about the return-to-work clauses.

Your "suitable" employment: That's a good one. I had a good chuckle when I was reading that one yesterday — "suitable" rather than "suitable and available." Well, I'm suitable for a job but the job's not there; you still want to reduce my wages because I would be suitable if the job was there. I'm as confused as hell about that one. You say I'm suitable to work but I can't get that job because that job doesn't exist, but you want to knock off my compensation by \$7 or \$8 an hour for some fictitious job that I'll never have. Where's the rationale in that? I don't have a problem with "suitable" if I'm suitable and you get me the job or you show me where that job is that I can work at and try to supplement my income. As everybody in this room knows, there's not a big abundance of spare jobs in Ontario, and there are even fewer job opportunities for somebody who's on a WCB claim.

Light duty: That's another good one. I've been a business manager for nine years in the local union. Every time one of my guys gets hurt, the contractor finds light duty. In nine years, I've never had one phone call from a contractor asking me for two pipefitters for light duty — never had one. I'm sure one is going to come up one of these days. I know it is, because every time one of my guys gets hurt, light duties fall right out of the air; there are all kinds of them. I think it's because they don't want them on WCB, but with only half my grade 12, I really don't know; I couldn't comment too much on that.

I don't want to take up a lot of your time, because there are a lot of people here who, as I alluded to before, have possibly some gut-wrenching statements. I'm going to stay and listen to them. I hope you people listen too.

Failure to cooperate: I like that one too. Who deems that I'm not cooperating? I guess it's WCB that's going to tell me I'm not cooperating. Construction workers have always been thought of at WCB as uncooperative. We take about five, six, seven years of our life to learn a trade that we'd like to work at for the rest of our lives, and because we get hurt and WCB insists we shift our whole lifestyle, we become uncooperative. That's what I see in it. Under the previous rules, if you deemed me to be uncooperative you could cut my benefits to 50%. That wasn't enough pain and hardship to inflict on me. Now you want to cut my benefits to nothing if you feel I'm uncooperative.

**0900**

One of my members a couple of years ago — I don't want to get into specifics; he's now out of the trade — had a back injury. They deemed him to be uncooperative. The man hadn't slept in his own bed in seven and a half months; he was sleeping in a Lazy-Boy. He couldn't get into his car, hadn't been out of his house in two and a half months. They cut him off his benefits because he couldn't get to the WCB office to see his counsellor. He couldn't get to the bathroom either, but he was supposed to get up three flights of stairs and travel six miles to see a WCB counsellor. He has three kids.

This, in my opinion, is a cowardly and ruthless attempt to put more physical and mental pressure on injured workers. This is very consistent with the Harris government's total disregard for the working-class people of Ontario. So

far Mr Harris has a pretty good record. All the battles he has taken on I think he's won. But then he's only taken on the poor, the uneducated, and now he's going to take on the sick and injured. But remember something: when he takes on the sick and injured he's also going to take on organized labour. Whatever Mr Harris does, for all the power Mr Harris thinks he has, he can't shut this province down. But I know an organization that can.

Thank you very much. That's all I have.

**The Chair:** Thank you very much. There is time for a brief question and a brief answer from each caucus. We'll begin with the Liberal caucus.

**Mr Richard Patten (Ottawa Centre):** John, thank you for your presentation. I can see that you can go through that bill and just pick off all the ways in which fairness has gone — even the word "fairness" has gone from the bill — and the shift in emphasis that now it's going to be an insurance board. At least before, even with all its flaws, it was workers' compensation. It's not going to be called that any more because it's not going to be that.

One of the issues that comes up time and time again, John, is the difficulty in your industry for return to work. There were two ideas; one came from the north and one came when we were in Windsor. With the multiple employers that workers have very often, who is the one responsible when someone got injured? Maybe it wasn't that one, or maybe it was a repetitive injury over time, with wear and tear or whatever. But the problem, as you say, is, who wants to have someone who is injured in your industry when often you want someone with a strong back?

One idea put forward was to offer a credit system for the contractors, for people who could do some modified work. Have you heard of this idea? What would be your thought?

**Mr Telford:** That's new to me. You'd have to look at that, but I could see that working in the construction industry. Our jobs' degree of difficulty, physically, varies quite a bit. We have had some — I wouldn't say that type of idea, but we have contacted employers in the past, fair employers, and talked to them about some of our members who had some physical problems and they found jobs for them, productive jobs, jobs where the employers made money.

A compensation system, yes, I see what you're saying: maybe reducing the rate of compensation for those particular employers or something like that. In the construction industry, this has been a non-existent point for us. We've never had anything that was suitable in the construction industry, so I'm sure we would be willing to listen and work with any type of idea that may help us return our people to the work sites.

You hit a very good point, and it's not just the construction industry. Being in a small area like Kingston, probably having 16 to 20 steady contractors, once one of my members has a serious WCB claim, a back, a leg, something like that, his employment opportunities go right down the toilet. I've got to fight tooth and nail to get him



on a job site because they're scared he's going to go down again. That's unfair. It's just not the way that Canadians should be treating each other.

**Mr Gilles Bisson (Cochrane South):** Thank you very much for having come to present this morning. A quick point before I go to the question; you touched on it briefly in regard to employers who coerce or intimidate or bully, or whatever the term might be, employees to go back to work once they've been injured. I can tell you, I come from the mining industry, and there are some operators, especially non-union operators, where they're bringing people back in in casts because they don't want to see their WCB assessment go up. When those incidents happen we're able to get to the board and we have some mechanism to penalize the employer. Under this changed legislation, I fear that's going to become much more difficult and prevalent.

You raised a point that I think is really important, and that is back injuries. More times than not, when they have a muscle strain injury, people will not file a claim immediately. As you say, it's a thing that happens over a period of time. Sure, there are incidents where somebody gets hurt and it happens there and you have one incident that you can go back to. But with most back injuries I've seen, you got hurt once, you went back to work, it was sore, you tried to live with it — six months later, two years later etc.

With the time limit, you're going to be in a situation where not only are these people going to be limited in accessing compensation; in a way, you're going to be forcing workers to file claims even though they're probably not ready to go on compensation, because you'll fear that if you don't file for the claim you'll never be able to qualify in the future if something should go wrong. Does that have an effect of possibly bogging down the board and actually causing more havoc in the board than the government is aware it might cause?

**Mr Telford:** I see what you're saying. I see two sides of that, actually. Yes, there is a possibility that if the worker wasn't going to file, now, if he's educated enough to know the system — that's the other problem. Some of our people now understand the WCB system; with the change, it'll be a period of time until they understand the new regs, if these go through. Yes, I think that's what will have to happen.

We will probably be instructing our people that if you get hurt on a job site, if you feel some pain, you'd better get a form filled out because six months from now you're not going to have an opportunity to go back and file that form. It has to be documented. You get the papers started.

**Mr Bisson:** It's more than documentation. You'll have to file for benefits to qualify, to be turned down so that later when you do get reinjured you can qualify for the original injury. That's what you're going to have to do.

**Mr Telford:** The other side of that, which came to me when you were speaking, is that if we don't get out to our people and educate and inform them of these changes, our people are going to have what we consider maybe minor injuries that turn into major injuries; their time period is

going to have elapsed and you'll have no recourse back to the Workers' Compensation Board.

**Mr Bart Maves (Niagara Falls):** I'd just suggest that now there is a time limit also. I would think that telling the people you work with that same thing right now is relevant.

You talked about a couple of things we've heard before from construction trades councils: the notice of accident and the obligation to apply. Really, there is nowhere that the act says you have to get a form from an employer.

**Mr Telford:** Where would you get it?

**Mr Maves:** A doctor. You can get it from your union. You can get it from the WCB office. It will be a variety of places.

*Interruption.*

**The Chair:** Order, please.

**Mr Maves:** The form is available in English and French and the WCB provides services in 70 languages.

The other thing I'd like to assure you of is that the return to work for the construction industry is being discussed as a unique situation with COCA and the trades council and the Ministry of Labour right now. That's going to be prescribed in regulation. I think the act sets out construction in some of these instances, and that is being discussed right now.

**Mr Telford:** Where do we get our form 7s now when our people get hurt? From the employer. The employer has the form 7s in his job site trailer, so we go and get the form 7 and fill it out. You don't think he's going to have the next form as well?

0910

**Mr Maves:** He may have them, but you may also be able to get them in other places.

**Mr Telford:** Let me just run this scenario by you. I'm at work next Thursday morning and I get hurt and I feel a little bit intimidated to go to my employer to get this — whatever you're going to call it. I'm not sure what you're going to call it. So I feel intimidated and I don't go to my employer Thursday. Friday I don't work, so I go to my doctor and I get one, and it hits my employer's desk on Monday or Tuesday. What's the difference? Now I've gone behind his back and put a WCB claim in on him.

**Mr Maves:** Don't a lot of people put WCB claims through their doctors?

**Mr Telford:** My guys don't. My people are instructed — I keep saying "guys" because we don't have any women in our union, and I apologize for that.

**Mr Maves:** Then this would be no different.

**Mr Telford:** Our people get all their form 7s from their contractors.

**Mr Maves:** Then this would be no different for them. There would be no change for them.

**The Chair:** I have to interrupt, I'm sorry. Our time is up. Thank you very much for coming before us this morning. We appreciate it. I didn't mean to insult you; I just didn't know if you knew the rules.

OPSEU KINGSTON AREA COUNCIL  
SERVICE EMPLOYEES  
INTERNATIONAL UNION, LOCAL 183

**The Chair:** If we could welcome the representatives from OPSEU Kingston Area Council. Again, please introduce yourselves for the Hansard record. You have 20 minutes.

**Mr Gavin Anderson:** Good morning, and thank you for the opportunity to address the committee today. Let me begin with introductions. On my right is Laura McWaters. Laura is a member of the Service Employees International Union and the chair of the Quinte Labour Council. She will add a few words when I have concluded my presentation.

My name is Gavin Anderson, and I am the chair of the Kingston area council of the Ontario Public Service Employees Union. The council represents over 3,000 OPSEU members in and around Kingston. These workers drive snowplows, guard prisoners, work at video display terminals, operate ferries in all weather conditions, care for psychiatric patients, lift stretchers, run X-ray machines and do a hundred other physically and emotionally demanding jobs. We know about workplace injuries and illnesses. It is vitally important to us that the government remain committed to workplace health and safety. It is our mental and physical health and it is our lives that are at stake.

There are many ways in which the proposed Workplace Safety and Insurance Act fails to adequately protect workers. As an OPSEU member and an elected official, I have a mandate to challenge Bill 99, but OPSEU's concerns and objections have already been read into the record by our president, Leah Casselman, when she appeared before the committee in Toronto.

Today I will use my brief time before you to highlight one small part of the act which I believe must be amended before Bill 99 becomes law. I refer to part III, section 12. Subsection (4) states, in part, "a worker is not entitled to benefits under the insurance plan for mental stress." Subsection (5) provides an exception for "sudden and unexpected traumatic events" but adds that "the worker is not entitled to benefits for mental stress caused by his or her employer's decisions or actions relating to the worker's employment, including a decision to change the work to be performed or the working conditions" etc.

I am a social worker at Pathways for Children and Youth. That is my full time job. Social work is not generally considered a dangerous job, but those of us who work in the field are all too aware of the risks. The number one threat to our health and safety is mental stress. The stress we experience can sometimes be sudden and unexpected, for instance when, as sometimes happens, a child we have been working with dies violently. More often, workers experience a grinding stress that comes with the relentless responsibility for large caseloads of increasingly impoverished and disturbed clients.

Recent decisions by my employer to change the nature of my work through restructuring have resulted in the

elimination of specialists and specialized clinical programs. This has made all social workers and community mental health workers responsible for not only a growing number of children and families but also a growing range of disorders and symptoms. The pressure to see more clients, more quickly, with less training and fewer opportunities to consult with specialists is enormous. There is also a new emphasis on seeing clients away from office settings, exposing therapists and counsellors to the added stress of meeting with unpredictable and sometimes volatile children and parents alone in small storefront operations or at the clients' homes.

Under the terms of the proposed act, those of my colleagues who are subjected to mental stress will not be judged legitimate candidates for protection and, should they become unable to work as a result of this stress, they will not be eligible for compensation. My employer, who is already indifferent to these workplace issues, will have even less incentive to set realistic caseload expectations.

From my nearly 20 years' experience in the mental health field, I know that there is a prejudice against invisible injuries. Unless there is a cast or a lab report, many bosses simply refuse to believe that an injury or an illness exists. The act, as it reads now, perpetuates this antiquated, narrow and biased view of health.

On behalf of the workers across the province who take on the heavy emotional burdens of clinical work, please delete the exclusions identified in section 12 and recognize that not all injuries are purely physical.

In closing, I do not want my focus on this single element of Bill 99 misconstrued as any kind of support for other aspects of the act. In fact, taken as a whole, Bill 99 reminds me of a 1,000-year-old approach to health. In the Dark Ages of Europe the healers, at least the officially sanctioned healers, dealt with the common headache as follows: When someone complained of a headache, the doctor drilled a hole in the hapless patient's skull. The belief was that this released the toxic vapours or evil spirits that were causing the head to ache. The process was celebrated, by the healers anyway, as successful because no one who was treated ever complained of a headache again. Lower reporting rates were equated with general good health and wellbeing.

Looking backward 1,000 years, we know better. Looking back just 125 years, when the bodies of workers were routinely crushed in the gears of unfettered industrialization, we know better. Twenty years from now, when we look back to today, when we more fully understand the causes of chronic fatigue, burnout and environmental illnesses such as breast cancer, what will people think? They will think, "We should have known better." Thank you for your attention.

**The Chair:** I believe Laura has a presentation as well.

**Ms Laura McWaters:** My name is Laura McWaters. I'm president of the Quinte Labour Council, and health and safety and workers' compensation representative for Service Employees International Union, Local 183.

Every day I get a daily litany of phone calls from workers injured in my local, all the way from Peterborough to



Ottawa, in panic, fear and oftentimes crying because they have had a horror story in the workplace with the employer or WCB. So my comments are going to focus on what they hear most in the workplace, which is keeping the costs down.

**Workers' compensation:** What is its purpose? Most people would think it is to compensate workers injured on the job. The Harris government seems to think it is a luxury payment plan pandering to lazy, incompetent workers trying to rip off the system.

The formula regarding implementing WCB compensation is thus: The employer agrees to provide a safe working environment for its employees. The employer agrees to provide a built-in financial safeguard for its employees should they be injured on the job. The worker is injured on the job. The employer honours its commitment to the worker by registering the injury, and the worker is medically treated, financially compensated and returned to the workplace.

Sounds simple, doesn't it? The employer and the state taking responsibility for taxpaying citizens who contribute to the health of the economy and the communities they live in. A little too idealistic? A little too moralistic? Working people don't think so. They do not go to work every day expecting to lose a life or a limb, too crippled to care for their families, to die an agonizing death from some industrial disease that they have probably passed on to their spouses or children. In other words, they do not make a choice to go to work to have their bodies hurt in any way. They go to work expecting to come home the same way they went — in one piece.

This government seems to have forgotten that we left the Industrial Revolution working standards behind us over a 100 years ago. This is 1997, not 1887. The arrogance of employers' inhumane treatment of workers has not been eradicated, even in this day and age. The proposals to strip away legislation that provides health and safety and compensation for injuries in the workplace send this province back to a time when workers were considered subhuman and not worthy of any sort of thought or compassion. After all, there was, and still is, another one to take their place — you know, the age of the disposable worker.

The experience of workers who represent other workers in their compensation claims is horrendous — watching their fellow workers lose their jobs, their homes, their families, their dignity, and not believing that it could happen here in Ontario in 1997.

(920)

Over the past year, the employers have become quite bold about not registering WCB claims, preferring to get the worker to take sick time or vacation time so they can keep their costs down; pressuring workers to come back to work before they are ready because they want to keep their costs down; not allowing the worker to stay off work at all, to keep their costs down; sending workers to a "WCB clinic" for therapy when it is a private clinic not tied in to WCB at all. The worker believes it is and goes,

thinking that their claim has been registered and they are receiving treatment from WCB, when in fact they are not.

Employers, feeling that a worker has been off on compensation too long, challenge the legitimacy of the claim weeks after it has been approved to get the worker back to work quicker, and keep their costs down. Unfortunately, WCB goes along with it, forcing the worker to repay all their benefits that they have already received, usually thousands of dollars.

Worse than this is WCB challenging the legitimacy of the claim after it has been established. Even when the employer does not object to the claim and in fact supports the worker, WCB tries to disallow it and make the worker repay the benefits. I have just had three cases in the last two weeks where that's happened.

What about some of the injuries that will be removed from the compensable list, like repetitive strain injury? Currently, over 50% of WCB claims are for RSI and over 80% of those claimants are women. Over 80% of claimants for back injuries are women who work in health care institutions, mostly nursing homes but increasingly in hospitals too. Astounding, when one would think they would be in the construction or industrial workplaces.

What about industrial diseases? The most insidious sort of injury, it sneaks up on you, your family, your community and strips away a vital contributing member of society and lays waste to everything and everyone it touches. Of course, a good way to hide it is to get rid of the Occupational Disease Panel which investigates and studies the effects of disease caused by the workplace. Then no one will ever know who is really to blame.

What about the proposal that the employer gets to decide whether the injury is compensable or not? A slight conflict of interest, wouldn't you say? A little like a rattlesnake deciding just how much venom they'll give you — a little at a time to kill you slowly or one big dose to knock you off altogether.

What about the proposal that the employer have the right to see your medical information, not just what pertains to your injury? Now tell me, just why would the employer invade a worker's privacy like that unless it was to use it to their advantage? Why would the employer need to know that a woman had a hysterectomy, when she injured her wrist; that a worker had a long-past treatment for substance abuse or psychiatric treatment when they lost their foot in a piece of machinery; that a worker had been treated for a venereal disease; when they pulled a muscle in their back? What possible justification could anyone have for invading someone's privacy like that unless it was to use it against them? Do you believe that any worker is going to want to establish a claim knowing that all their private medical information that their doctor is required to keep confidential by law is now to be released to the employer, who literally holds the worker's financial future in their hands?

What about the proposal to make the worker file their own claim? Again, no onus on the employer or the state to consider those who are uninformed, illiterate, do not speak one of the official languages, who basically do not and

probably will not ever know that WCB exists and that they have a right to it. But it keeps costs down, you know.

The bottom line is, keep costs down. Keep whose costs down? The profit lines of the employer and the implementation costs of the government, because, lest anyone forget, the government and the taxpayers do not pay one red cent into the fund. It's fully funded by the employers, who, as you know, have to keep their costs down.

But what about the cost to the worker in loss of mobility, a whole body, no time without pain, the loss of livelihood, home and family, the loss of dignity, self-worth and a reason for living? Just how much cost are we willing to attach to a worker? Who gets to decide and who has the right to decide?

What about the cost to the community and the state in the form of healthy, productive members of society who now rely on the state for assistance to simply survive every day? Doesn't this cost more? If you're going to keep costs down, doesn't it make sense to keep workers safe in the workplace to begin with and then care for them promptly and return them to the workplace, where they can continue to make their own way in the world, than to consign them to a lifetime of poverty and dependence upon the state? Doesn't this in fact cost us all more economically and socially?

Workers will be so intimidated and humiliated by the process that it will not be worth their while to file a claim. It will cost them so much financial, mental and emotional anguish they will choose to remain on the job injured and suffering, rather than try to establish a claim that may cost them their job.

This whole speech has talked at length about the government's perceived need to keep the costs down, when in fact we all know that the WCB fund is more than amply solvent and the reality is that employers do not want to shoulder their responsibility for the workers they employ and so have lobbied the government to help them reduce their costs by eliminating or reducing accessibility to the fund and the amount of financial compensation.

In closing, the hallmark of any civilized society is how it treats its weakest members. Injured workers have become a weak link in the chain and need to be supported and made stronger, not cast aside and replaced. Reducing benefits, reducing accessibility to benefits and reducing workers' human rights does not keep costs down. It simply scapegoats the worker for the failings of the employer and the state to do that which is right, and what it right is to meet its obligations when workers under their employ and protection become injured.

**The Chair:** Thank you very much. We have time for a very brief question and answer from each caucus, beginning with the third party.

**Mr Christopherson:** Thank you, Gavin and Laura. I appreciate your presentation.

Like you, there are so many things to deal with. The one thing I think I'll focus on is the issue of stress. The government of course, if you think about how they're doing this, is denying WCAT the ability to make independent decisions from board policy. The board is now

controlled by the government's friends because workers lost their 50% of the seats that we had on there. In fact, they fired all the labour representatives that were on there already. By putting those people in charge, the policy now rules WCAT cannot make decisions outside of policy, and then they banned stress under the law. It takes a whole growing area of workers, as you've indicated, and removes them from the ability to be compensated for a workplace injury.

What you hear from the government and employer groups is that you can't identify stress that's related to work versus what happens in every day life. Yet one of the benefits of public hearings is we've heard evidence quite to the contrary.

We've now had Dr Ruth Berman, who is the executive director of the Ontario Psychological Association, state very clearly in these hearings in Toronto that, yes, you can differentiate between stress that originates from the every day activities of life and what's happening in the workplace. That can be done.

The Canadian Mental Health Association is also making the same claim, and just yesterday Dr Nick Kates, a psychiatrist in my home town of Hamilton, went on the record as saying the same thing. In fact, he said:

"Removing stress as a compensable condition has a number of serious implications"; one is "devaluing the concept of stress, it makes it less likely that workplaces are going to take steps to reduce the amount of stress that workers are exposed to." We know that's the other part of Bill 99 and that is to remove a lot of the pressure that we've been trying to put on employers to make the workplace safe.

Gavin, my question to you would be this: Are you in agreement with other labour leaders across the province who see this as the biggest area of increases in compensable injuries that workers are facing, that this is the new area and that by cutting it off in Bill 99, this government's turning their back on those injured workers?

**The Chair:** Very briefly, please.

**Mr Anderson:** I wouldn't want to identify any one area as the area, but certainly it is a growing area. If I could add very quickly, you quoted a number of eminent professionals — psychiatrists, psychologists — as authorities on stress being legitimate. You don't have to have those credentials to identify stress as a workplace issue when somebody walks into their office and dissolves into tears, is quaking and unable to continue and, when they're removed from the workplace, are able to function quite normally. If you'll excuse me, that's common sense.

**Mr John Hastings (Etobicoke-Rexdale):** Ms McWaters, for common sense, would you not think that when you look at the cost of workers' compensation totally — you have in your brief that it's the employers who pay it. Factually that's true, but when you look beyond that, it's the cost of doing business. Anybody, if it's a gentleman here from the construction industry — you renovate your house, you go have your car repaired, you have your shoes repaired, you buy new shoes. The factor



of the cost is in the business for that employer, whether they be retailers —

*Interruption.*

**Mr Hastings:** No, it's true, that in fact everybody shares that cost through the purchase of a consumer service or good. Do you not accept that as a reality?

**Ms McWaters:** No. What I accept is the employer has a moral obligation to look after those who are under the care of their workplace. There was an agreement that the employer would fund injured workers, and if you're trying to tell me —

**Mr Hastings:** Where does that injured worker get his cost or his pension or her temporary total benefits when he or she gets injured on the job through no fault of their own? It's through that employer and that collective group, whatever the nature of the business. Is that not a reality? Do you not understand that?

*Interruption.*

**The Chair:** Order, please. Allow the presenter to answer.

**Ms McWaters:** I do not understand what you're trying to get at. I'm going to make an assumption here that you're trying to tell me that the employer is going to reduce its costs to the worker because it's too costly for them.

**Mr Hastings:** No.

**Ms McWaters:** Then what is your point?

**Mr Hastings:** The point is that just like —

*Interruption.*

**The Chair:** Order, please.

**Mr Hastings:** Just like OPSEU, when we had the problem with the strike and you folks had your strike of your own office workers, you had a cost problem. It was quite obvious you either had to reduce their benefits in terms of salary, lay them off or give them early retirement or some such arrangement, because you simply, as a union, did not have the moneys coming in to cover all your costs; the same here on the employer's side. When an employer hires people, that is a cost.

0930

**Interjection:** Where have you been?

**Mr Hastings:** Where have you been?

**Mr John Gerretsen (Kingston and The Islands):** I don't understand that kind of argument at all. The bottom line is this: You've got somebody who cannot work because of stress-related problems. That person has to live, has to have resources, has to have money to live. It's as simple as that.

I think the way mental stress is handled in this act, if you look at particularly subsection (5), in which it says we're not going to pay for mental stress but there are certain circumstances when we will pay for it, if it's a traumatic experience, but not if somebody gets fired or the conditions of work are changed or anything like that, it is a typical underlying attitude here that in which the government basically says, "We think too many people are faking it." I think that's a horrible attitude for a government to take, and putting it under the carpet is no different than saying, for example, mental illness is not really an illness.

I totally agree with your presentation. This is a step backwards in which we don't recognize mental problems or conditions as real medical problems. It's as simple as that.

**The Chair:** Thank you very much. We appreciate you coming before the committee to give us your ideas.

#### EMPLOYERS' ADVOCACY COUNCIL, PETERBOROUGH AND OTTAWA CHAPTERS

**The Chair:** I call now on representatives from the Peterborough and Ottawa chapters, Employers' Advocacy Council. Good morning and welcome. If you'd please introduce yourselves for the record.

**Dr Roger Rickwood:** I am Roger Rickwood. I am the chair of the Ottawa chapter of the Employers' Advocacy Council. I'm also representing the Peterborough chapter of the Employers' Advocacy Council and a provincial vice-chair of the EAC. With me is Sherri Helmka, the executive director of the EAC. We're based in Kitchener. We're a province-wide organization. We represent 1,700 employers across the province, from large corporations like Canada Post down to the mom-and-pop store on the corner. We are a very comprehensive employer organization.

The brief that we're going to present today, unfortunately I don't have copies for you at the moment. I was trying to get them done up the street at a local firm, which I won't mention, but their machine — wonderful graphics. They could produce them, but they couldn't staple them together. In about half an hour the actual copy will be presented to you. I apologize for that. Technology hasn't advanced that far yet.

I'm going to concentrate today on three major points. Having heard some of the questions from some of the honourable members, I'm sure there will be some interesting questions thrown to me.

The major thing we want to say is that we support Bill 99.

*Interruption.*

**Dr Rickwood:** The wonderful world of democracy is here today.

**The Chair:** Order, please.

**Dr Rickwood:** I will exercise my democratic rights and I will speak to the committee.

We support Bill 99 because we think it will modernize the workers' compensation system in this province. This piece of legislation has not been revised since the 1950s. It has been piecemeal, cobbled together, and it needs a comprehensive review. This province is falling behind other provinces. We are losing the competitive race. We are going to put ourselves at a disadvantage vis-à-vis the border states and our comparator provinces.

*Interruption.*

**The Chair:** Order, please. It's difficult to hear.

**Dr Rickwood:** We have to survive to ensure that employers and workers and the citizens of this province get a

comprehensive system at a reasonable cost that is satisfactory to all the stakeholders. That's our basic position, and we can go into all those items in detail.

What I want to talk about are three items that I think you'll be interested in. One is the occupational disease issue, which I understand has been kind of a fiery topic around the province. I was the employer representative on the task force on occupational disease which was appointed by the Peterson government and continued by the Rae government. We reported; we had a unanimous report. Unfortunately, the government of the day, which was the Rae government, did not act on the document.

The Conservatives have not yet, other than this piece of legislation, made any action on the occupational disease issue. It does need action; there's no question about that. Occupational disease is a critical issue in this province. The document that you have in front of you, Bill 99, does not really fully flesh out that issue, so you're right to raise the issue of occupational health because it's not being dealt with in sufficient depth here. However, we're going to talk a bit about the structures here today. I'm sure some of the honourable members will have some questions on that.

The Occupational Disease Standards Panel is, I understand, to be merged into the compensation board. The Employers' Advocacy Council took the position that there should be a scientific advisory council that would give scientific advice to the Workers' Compensation Board of directors: not the board adjudicators, not the board staff, but the board of directors. This scientific advisory council, in our opinion when we made our submissions to Mr Jackson, did not have to be inside the board; it could be outside.

The government, in its wisdom, has decided for administrative efficiency reasons to include it inside the comprehensive board structure. For administrative efficiency reasons, we go along with that and support having the function brought inside the board. However, we believe there should be an independent structure, advisory body, inside the compensation board, similar in principle to British Columbia, where there is a secretariat inside the compensation board that gives independent advice to the board.

This body, the occupational disease advisory council, committee, secretariat, whatever you want to call it, would be a purely scientific body. It would be made up of professionals. It would evaluate the scientific evidence and would make recommendations to the board of directors. The board of directors could accept them, could amend them or could reject them. This structure, we think, would work.

We do not see the structure doing any research on its own. That research could be done by faculties of health such as at the University of Waterloo or at Queen's University here in this wonderful city, or it could be done at McMaster University, and also it could be carried out by the Institute for Work and Health. There are plenty of good, solid research institutions in this province that can deliver it independently and objectively.

The EAC believes very strongly that occupational disease needs to be dealt with and there has to be adequate research money put into it. We believe it should be highlighted in this legislation. It's not something that has been done, but we do not agree now with keeping the ODSP outside of the board structure. We have to find some efficiencies, some economies, to get the task done. So that's the first principle.

#### 0940

The second one, which you've probably heard about very much around this province, is return to work. Return to work has been addressed in the document. We would like to see it go a bit further and to bring in alternative dispute resolution mechanisms so that the parties could sit down at the table — the worker, his union representative, the board, the employer — and work out an arrangement and then that arrangement would be binding, not one that takes five years to sort out and to thrash out, where people can't get back to work in a quick, modern kind of way.

I will be submitting to this committee a document which I prepared with Judith Campbell, RN, and Rose-Marie Dolinar, RN, in collaboration with Dr Robert Fassold, that documents the return-to-work program that was implemented at Canada Post Corp, which documents that return-to-work programs can work and they can bring people back to work.

**Interjection:** If there's a job.

**Dr Rickwood:** If there's a job. Believe me, we think everybody should show some imagination in this province — employers, workers, the board, the people in the health care community — and find jobs for people. There's no point in this province having people sitting on the sidelines where it costs money and they're not doing any work. That doesn't help anybody. The EAC believes strongly in returning people to work and we want to get on with that job.

The third point that I wanted to talk to you about is the WCB-WCAT relationship. I understand some honourable members have had some comments on that and I don't expect that we can resolve this kind of issue today. We support the Bill 99 position that the board should be the policymaker and that the WCAT should have limited right of review over those decisions, mainly on the question of fact. Issues of law, if they have to be dealt with, are ones that legitimately should go to the courts for adjudication.

We do not support the continuation of this process in Ontario which prolongs cases up to five years before you can get a final decision. We believe the rubber hits the road at the compensation board, and that is where the decision should be done right in the first place.

If there's a problem with the decision of the board, you go back to the board and you get it fixed there. If the board can't fix it, you fire the people at the board and you bring in new people who can fix the problem. We demand performance out of the compensation board in this province. We do not believe in this long legal, bureaucratic process that has been developed in this province. It's not helping anybody. It just prolongs the case and hurts people in the final analysis. That is our basic position there.



We also believe that if there is going to be policy review in this province, this committee is a good vehicle for collecting information and suggesting how things can be done. There also can be another device which has been invented in the provinces of Saskatchewan and Newfoundland, where there's an independent inquiry structure that the Legislature appoints every three to five years. They do a fact-finding tour around the province, bring certain critical issues forward, and then that can be dealt with by a legislative committee in a pragmatic, proactive and effective way. That would be a better method than this higgledy-piggledy, cobbled together WCAT leading-case process that doesn't really solve the problems in this province.

Those are the three key issues that we wanted to put on the table today. The Employers' Advocacy Council is here to assist. If we can't answer the question today, we will provide it to you in written form. We work with all three political parties in this province and we have members in our organization from all three political parties. We are trying to make sure the employers' viewpoint is represented because that's our job, but we don't believe the process in Ontario can be a one-way dialogue. It has to involve the workers, it has to involve the decision-makers, the compensation board people and the people in the health care industry. Unless all the stakeholders are co-operating on an active basis, this system is not going to work.

Thank you for allowing me and Sherri to come before you. I'm prepared to answer questions here today or to give you some documentation later on if you need it.

**The Chair:** We have three minutes remaining for each caucus for questions and answers and we'll begin with the government caucus.

**Mr John O'Toole (Durham East):** Thank you very much for your presentation, Roger and Sherri. I think it's important, as you suggest, for each of us to listen to the balance of input from employers and workers, injured workers more specifically. That really is what these hearings are about.

In fact, you might say the hearings in Ontario have been going on since 1981. The first reform commission with regard to the dysfunctional nature of the WCB has been going on — all three parties have led the charge, and I commend them for that. It's never been easy. I could for the record make some important quotations to make sure we understand the position — government is always in the position of being responsible for the changes. I'm going to move you through what the position of each of the three parties has been.

The NDP, in their review and during the election, had two pieces of legislation to defend as well as the royal commission: Bill 162 and Bill 165. Briefly, Bob Mackenzie made a statement: "There is a growing feeling that the WCB is becoming a drain on Ontario's economy, on our ability to attract investment and jobs and spark business confidence. Never has there been so much unanimous agreement that the board is in such critical need of reform and renewal." That's the former NDP labour minister,

Bob Mackenzie. I've heard him speak a number of times: a good man, tried to change, but they have to deal with their political partners, if you will.

I'm going to bring this a little closer to home and I'm going to quote Mr Christopherson, who is their labour critic today. This was in reference to the unfunded liability: "In the three years since we've brought in our WCB reforms" — by the way, I could give you some numbers on how much they actually took out — "the unfunded liability has dropped every year." His focus was the unfunded liability, and good for him, because without the money there is no sustainable future for employers or employees.

The Liberal Party position should be well understood early today at the hearings. I'm going to start with the leader, Mr Dalton McGuinty, and I'm going to tell you what he says. Regardless of Mr Patten's view or Mr Gerretsen's view, their leader very clearly stated — I might as well start with it, give you the date and everything. It was on TVOntario's Studio 2. The question raised was:

"Dalton, the Conservative government is making changes to workers' compensation. Would you keep them?"

The response of Mr McGuinty, the Liberal leader: "Yes, I'd keep these changes."

"Would you bring down or remove the rates?"

"No."

Very clearly, their job is to oppose everything we say. The reality is, we're trying to improve a system that is widely understood, since 1981, to be broken. If you think it's working, every case I've heard has failed because the current system is dysfunctional.

I believe we need to work together. I agree that every injured worker should be heard. I agree in every bit of the partnership, but we both have to listen to each other. These hearings are about listening. We are listening. There will be changes, and I'm convinced that if we think this is a class war or something like that, get over it. We need to work together.

On the liability, I think it's important —

**The Chair:** Mr O'Toole, briefly, please.

**Mr O'Toole:** If I can ask one more question, are you prepared to work with union, employees and employers to improve the system, which is widely understood by all parties to be broken?

**Mrs Sherri Helmka:** The Employers' Advocacy Council has always been willing to work with all stakeholders. It has always been our position that we want to effect constructive change, and we know there are injured workers out there who are not being treated fairly. Yes, we are committed to fixing the system and working with the stakeholders.

**Mr Gerretsen:** Just to respond to Mr O'Toole, we all agree the board needs reform, but what has cutting the premiums to employers when the system has got such a large unfunded liability got to do with board reform? Board reform is one thing. Cutting premiums to employers and cutting benefits to workers is something totally different.

That gets me to you, sir. You talk about competition. We all like more competition. We all like a full economy where everybody is working etc. What proof do you have? You said there would more jobs in Ontario and there would be more work done here etc. What proof do you have? You said there would be more jobs in Ontario and there would be more work done here. What proof do you actually have that by cutting the employer's premiums by 5% and by cutting the benefits to injured workers by 5% this is going to bring more jobs into Ontario, and where? Could you give us some examples?

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**Dr Rickwood:** The evidence I have is from talking to business leaders who make decisions, and that's the only kind of decision that counts.

*Interruption.*

**The Chair:** Order, please.

**Dr Rickwood:** Business decision-makers have documents that show the comparative cost of workers' compensation in Canada and the United States as one factor they look into when they make decisions, and on that basis we in Newfoundland are at the top of the heap in terms of the costs. If you can go to Quebec or you can go to Manitoba or you can go to Alberta and get a cheaper rate, you will go there. That's how businessmen make decisions, and whether we like it or not, that's how they do their calculations.

**Mr Gerretsen:** But do you have any names of any companies that didn't locate in Ontario because of the so-called high rates here?

**Dr Rickwood:** I don't have any specific names that I can give you. However, I was in Alberta last week and I saw the growth in that province, in Edmonton and Calgary, and I don't see that kind of growth in Ontario.

**Mr Patten:** Related to the Occupational Disease Panel, my understanding is that on the present basis the panel doesn't just go off half-cocked, that they will identify and examine areas and then recommend to the board what should be studied, and the board does have overall authority, so I don't see what the problem is. When you talk about the integration or the consistency, everybody knows that the board of directors has the overall authority, except in the case where they may be not honouring the legislation or there may be something that has to do with general labour law and WCAT may bring about a change. But I think you need to have that.

You are suggesting that the Occupational Disease Panel be done away with and a scientific council replace it. What would be the difference between what is there now and what you are proposing?

**Dr Rickwood:** First of all, Richard, we're sorry that we can't be giving this presentation in Ottawa where you are a local member. Unfortunately, the committee was not going there, and the Ottawa chapter is sorry about that.

The Occupational Disease Panel is a mixed policy-scientific body. It has members who are laypeople as well as scientific people. We believe that the advisory council should be only staffed with scientists, whether they are

physicians, psychologists, psychiatrists or chemists. It would be on a scientific basis.

*Interruption.*

**Dr Rickwood:** No, we're not suggesting an employer sit on that body. We're not suggesting that workers sit on the body. They should be scientists primarily who sit there and give technical advice. Where there is a policy decision that involves a political component, that should be done by the board of directors, which should be fully reflective of the community. So that's the structure.

There are some costs, about \$1 million, that the ODP costs, and we believe that some of those costs could be cut down if it was moved inside the organizational structure of the compensation board in terms of physical structures, library services, along that kind of line, and those extra dollars could and should go into research on various occupational disease issues. They should be reinvested in occupational health issues.

**Mr Christopherson:** Thank you for your presentation. Just to set the record straight with regard to your presentation and the comments of Mr O'Toole, yes, we are proud of the fact that the unfunded liability came down by \$1.1 billion, and we believe it puts the lie to your argument that there is a crisis out there that justifies what you are doing to injured workers.

I'll tell you what else we did. I'll defend our record any day of the week, because do you know what else we did? We gave a \$200-a-month increase to over 40,000 permanently injured workers who will never work again. I'll tell you what else we did. Rather than kill it, we funded and made operational the Workplace Health and Safety Agency, which you killed, and we created a royal commission that publicly was going out looking at how to make changes that are positive for working people, not Bill 99 that was drafted by your buddies in the corporate sector. And I'll tell you what else. We didn't cut by 5% the amount of money that injured workers are getting. We didn't do that; you did. We gave workers 50% of the seats on the board of the WCB; you fired the labour representatives.

I'll tell you what else you're doing. You're eliminating the right of injured workers where it's stress-related; chronic pain was eliminated; you've got time limitations that are going to remove workers' ability to claim; you're killing the ODB; and we sure as hell didn't give \$6 billion of injured workers' money back to the corporations.

*Interruption.*

**Mr Bisson:** Dave stole half of what I wanted to say, but the other half had to do with the ODP. You're saying that what you want is an independent body that's going to scientifically look at the data in order to prove or disprove if something should be compensable, and then you're saying, "We want that independent from the board and we want them to make their recommendations to the board itself to decide if it will or will not be policy."

That's how it works now. The ODP is an independent agency. I don't want scientists administering an agency. That's not what they're supposed to do, be pencil pushers. I want people to administer that. There's a very small staff



at the ODP to do that, and the bulk of the \$1 million they have is used to hire scientists outside of the WCB, all over the world, to be able to take the scientific data that we need to prove or disprove that something is industrial disease. The current act, under section 95, basically says the findings of the ODP are then sent to the board and the board decides if the policy will or will not be adopted by the board itself.

I take it you're saying you are in agreement that it has to be independent and you are in agreement that there has to be a board as far as deciding what happens. How is that different than what is already happening now?

**Dr Rickwood:** For one thing, it's outside of the compensation board. It's an independent structure. It has a lot of paraphernalia —

**Mr Bisson:** But you're calling for an independent structure.

**Dr Rickwood:** No. I'm calling for an independent, arm's-length structure within the compensation board where the physical facility —

**Mr Bisson:** But the point I make is that is already the case, because the ODP exists within the workers' compensation structure through the act.

**Dr Rickwood:** The ODP is not the same thing as what we are recommending. The ODP is a combination of scientific and laypeople. It is a political body.

**Mr Bisson:** So the code word is that you want something that the employers can control and deny access to benefits for workers.

**Dr Rickwood:** No.

**Mr Bisson:** That's the code here. That's what you're saying.

**Dr Rickwood:** I want something which will give scientific evidence and evaluation.

**Mr Bisson:** No. You're saying you want employers to control —

**Dr Rickwood:** No.

**Mr Bisson:** Because it's now independent.

**The Chair:** Mr Bisson, please allow the witness the opportunity to answer your question.

**Mr Bisson:** You're perfectly right.

**Dr Rickwood:** I appreciate your view, and it is certainly a legitimate position to put forward that you can have an external body that can combine lay and scientific opinion. That's one way to do it. But in the time of a shortage of funds and time to speed up processes, it's our view that bringing this body within the compensation board will provide some economies, will take some of those dollars, put them into pure research and will work a lot like the British Columbia secretariat which deals with occupational issues and is working effectively there. If you can get some economies, you can get more money into doing research; if you can speed up the processing of policymaking and establishment of criteria, that's what we suggest be done.

**The Chair:** We must move on. Thank you very much for coming this morning.

*Interjection.*

**The Chair:** Mr Bisson, please. Order, please. On behalf of the members of the committee, we appreciate that you have come this morning.

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## KINGSTON AND DISTRICT LABOUR COUNCIL

**The Chair:** Can we please call representatives from the Kingston and District Labour Council to come forward. Good morning and welcome. Please introduce yourselves for the Hansard record.

**Ms Elizabeth Jones:** My name is Elizabeth Jones, and I'm with the Greater Kingston Area Injured Workers Association.

**Mr Peter Boyle:** Good morning, members of the standing committee. My name is Peter Boyle, vice-president of the Kingston and District Labour Council and president of Local 343, United Steelworkers of America here in Kingston. With me today are Elizabeth, who has introduced herself already, from the Greater Kingston Area Injured Workers Association, and John Cairns, who is an injured worker from the Quinte area. They'll be assisting in the presentation.

The Kingston and District Labour Council represents nearly 10,000 workers in almost every field of employment in this region. We help both organized labour unions and the unorganized to assist all workers in the quest for fairness in the workplace and in the community. In this endeavour, we also have strong ties with community groups in the region.

I want to say this. Bill 99 is a well-orchestrated, employer-slanted combination of clauses that will lead working people in Ontario down a road to greater pain and suffering. It will transcend the minimum limits of human dignity to all injured workers. Bill 99 has only one place worthy of its present contents and that's the garbage container.

Bill 99 in its current form opens the floodgates to undermine the independence of the compensation system and welcome bad employer practices to Ontario: intimidation, breached confidentially, less coverage for workplace injury on the workers' end of it; and less training and commitment to safer workplaces, shifting of costs directly from employers to the taxpayers to add to company profits on the employer side. It's not going to help anybody.

Provisions of Bill 99 reward the terrible employers of the province and taunt the good employers to follow suit in the name of good business practice and competition.

There are so many changes that will affect workers' health, it is clear the intent is to blame workers in this act. Many companies now use American-style injury reporting to be comparative in the marketplace to their American counterparts. These statistics hide compensable lost-time injuries that are currently recognized by the WCB because, by American standards, they're not disabling at the time of injury.

Bill 99 continues in this direction by seeking to eliminate the right of entitlement to soft-tissue repetitive strain injury, chronic pain and mental stress. This all comes from workplace reorganization that in the past few years has been on the increase.

To further confuse workers on the origin of their injury they must apply for benefits themselves, not by a doctor, as current rules allow. I have seen in my experience in the workplace with injured workers the doubt and suspicion that even the rated good employers inflict upon workers when the worker is not carried out on a stretcher when injured. The changes proposed to limit claims and compensation for workers clearly target the workplace injured.

To add to this mess for injured workers, employers will be given licence to define a return-to-work process. For whose benefit will this evolve? To avoid lost time ensures only reduced cost to employers, not benefit, not healing to the worker.

There is nothing in this bill we can find that will provide for reduction to workplace injury and disease. In fact, the Occupational Disease Panel will be disbanded, further hiding the causes of workplace disease. This panel must be left intact to continue independent research.

By the very nature of the changes to cut benefits for workers and to hand employers, who already enjoy some of the lowest rates in Canada and North America, a windfall signals a disaster for workers.

Workplaces and the employers that control them must bear the responsibility for injuries and deaths occurring while they make their profits. They must be accountable for the business decisions they make that lead to workplace injury and disease. Reduction in employer responsibility to pay will lead to increased workplace carnage that shifts the cost of bad bosses to the workplace, the community and all taxpayers who have to foot the bill for health care-related costs, while the bad employer profits.

I have attached some information on return to work which I hope the members in their consultations over the weekend will have a close look at.

**Mr John Cairns:** I didn't get to introduce myself earlier, so I'll take that opportunity now. My name is John Cairns. I am an injured worker. I am a human being with a heartbeat and pulse. I represent injured workers, workers, anybody who gets up with a heartbeat; in other words, mankind.

It is an honour and a privilege for me this morning to share and reflect on Bill 99 from an injured worker's perspective. It is a particularly important occasion. It's a rather discouraging occasion, nonetheless an occasion on which I am motivated and committed to pour out the meat and potatoes, if you will, with respect to Bill 99.

In the next few minutes I will share my voice here today with respect to coping with life after a loss. Bill 99 certainly has its financial deficit implications for workers and injured workers, however my presence here today is to convey a message of the human deficit that this bill will impose on the working people and injured families across this province.

Early one cold November morning I woke up assuming that my life would be much as it was the day before, leaving to go to work, expecting to return at the end of my workday and all would be, so-called, normal. I had that feeling about myself of being responsible, being independent, being in charge of my life. I was living a life of independence, one with dignity and a sense of belonging.

That platform of my life came to a horrific, abrupt end, without any warning or any preparation. On November 30, 1992, 68 tons of railway car passed over top of me. Instantly, I suffered the physical loss of my arm and leg, never again to know the way it used to be; from a life of total independence, now to live in a state of sorrow and despair, experiencing pain so intense from shattered dreams and shattered hopes, which now only became like grains of sand slipping through my fingers.

**1010**

Healing physically was a picnic compared to the emotional and psychological devastation. To lose my identity, my confidence, my self-esteem and that sense of worth only equalled that lost feeling of being somebody. As an injured worker, I was overwhelmed with the daily expectations of life. My whole person was consumed in an abyss of emotional and psychological despair.

In every aspect, Bill 99 exhausts any hope left to an individual who is so desperately striving for a quality of life worth living for, in a world that is anything but normal to them. This bill does not embrace a fair and compassionate agenda in the best interests of workers, injured workers and their families. While we try to cope and balance the daily expectations of life, this bill does not provide a solution to the human hurt and suffering incurred through an injury.

How does taking away benefits from the injured workers and their families in order to give \$6 billion back to the employer create a solution to the human pain and suffering incurred through no fault of one's own? This bill reduces the incentives for employers to prevent accidents. If it costs the employer nothing when a worker is injured, employers will not spend money to prevent the accident in the first place.

Where is the consideration of the humanitarian implications should an injury occur? Is this government sending out a message to the people of this province that it's okay to have 8,000 deaths a year and over 850,000 injuries annually? To concentrate on reducing claims rather than preventing them in the first place does not alleviate the human deficit of an injury. To put workers and their families into frightening situations as their employer forces them back to work — and should the return-to-work plan not be in the best interests of the injured worker, the injured worker is then deemed uncooperative and subject to having their benefits terminated. How does this create a life of purpose and one with a sense of contribution back into their life and their community? How does Bill 99 build a rehabilitation system that assists an injured worker and their family in acquiring a standard of living that they once enjoyed, pre-accident? Where is the funding for education and safety awareness?



To erode our quality of life as a result of this government problem-solving on the backs of workers and injured workers with their families is unacceptable and inconceivable.

*Interruption.*

**Mr Cairns:** I'm not finished yet.

As far as I am concerned, this bill is a pure and simple attack on the most vulnerable people across this province. Injured workers and workers ought not to be penalized for being injured. This bill's proposals will leave the injured worker and families defeated. We need a bill that will care for us as a whole person, not lacerating us into monetary pieces, not just a compensation or, as we heard earlier, the new name, an insurance system, and certainly not being reduced to a number.

Injured workers and their families deserve a future. We deserve a future that will generate confidence, optimism and a sense of hope back into our lives. We need a bill that suggests a humanitarian type of approach, not a one-sided employer, business type of approach. Indeed, we are human beings. Therefore, humane changes are the kind of changes that will meet the needs of workers, injured workers and their families in a holistic way.

Should this Bill 99 be implemented as tabled, it will become a cancer in people's lives. People make up our society. What do we do when cancer has been diagnosed? We immediately treat it with chemotherapy and we try to promote and sustain life. We kill the cancer. That's exactly what this government needs to do with Bill 99.

*Interruption.*

**Mr Cairns:** We need to move forward in fairness and compassion. You see, we believe in tomorrow. We believe in change. We believe in growth and we believe in life after loss. So ought this government. Our presence here dictates such.

Life is a series of choices. Choices have consequences. This bill's consequences will cost workers and injured workers and their families an arm and a leg. Government members need to choose today to tear down this bill and build up lives. Workers and injured workers and their families have taken the responsibility in resurrecting our lives the best way we know how. The time has come for this government, then, to take responsibility in equipping us with the kind of tools we need in acquiring a quality of life, a life of hope, filled with purpose; tools that would reshape, reproduce and build lives; tools that would turn obstacles into opportunities, disabilities into abilities, making a contribution, fulfilling our potential, so that at the end of the day we can say, "I am a victor and I'm not a victim."

**The Chair:** We have time remaining for questions from one caucus only, and it will be from the Liberal caucus.

**Mr Boyle:** Excuse me, we're not done our presentation yet.

**The Chair:** I apologize, I'm sorry.

**Ms Jones:** Ladies and gentlemen of the panel, John spoke at the royal commission and was given a standing ovation. He has a very visible injury, but what you don't

see is that John now doesn't have a job. He's going to be rehabilitated, and God help him if he doesn't jump through the hoops on one leg. God help him if he's given a hard time. God help him if he has terrible pain, because the board won't recognize his pain because he has visible injuries, he has no arm and no leg. So he has a reason for the pain. You don't see the loss of his family. You don't see the loss of his home. You don't see that here today. You just see an injured worker, and this government has said that injured workers are a special interest group.

Injured workers want to be treated in the same manner they were while they were working: as respected members of the community. Currently the board is trying very seriously to implement the bill and injured workers are being told to apply for welfare. To be told to apply for welfare when we're going through a system right now, and especially when transition takes place — why should an injured worker have to apply for welfare? Why should an injured worker be told to go to a food bank?

They have a viable injury, but the concern of the board is not the injured worker — that's where they make their first mistake — the concern is to keep the cost down.

The injured worker also has an unfunded liability. They have rent, they have mortgages, they have car payments, they have all the necessities of society. We have an unfunded liability as well. We've worked hard to maintain a standard of living, only to have it eradicated by Bill 99. Thank you.

**The Chair:** Unfortunately, we don't have time for questions, but thank you very much. I'm sure each of the members of the committee has appreciated your presentation today.

1020

EVELYN KING

NANCY WILDRAUT

**The Chair:** I'd like to now call upon Evelyn King. Please come forward. Good morning and welcome. Please introduce yourselves for Hansard.

**Ms Evelyn King:** My name is Evelyn King. I am going to share my time with Beate, so I'll go first. I am an injured worker. My purpose in appearing before this committee today is to provide a face to injured workers and hopefully enlighten government members on the struggles that exist within the current workers' compensation system.

What happened to me could happen to anyone. I was employed with the Becker Milk Co at a job I thoroughly enjoyed. I had received my 10-year pin and had been promoted twice. I worked out of Kingston, covering a territory from Cornwall to Oshawa and points north. My job was to ensure bank deposits were made, prices were correct and store inventories were up to company standards. I was given a new car every two years and had use of the vehicle at all times, with gas and insurance paid by the company. I was a workaholic and was voluntarily on

call every weekend in the event of a robbery or break-in at one of the stores.

On September 29, 1979, my life changed drastically. I was in a car waiting for a red light to change to green when I was rear-ended by another car which failed to stop. This accident resulted in my having a spinal fusion and screws placed around my spine for added support. I was in a full body cast for three and a half months following the surgery.

When the cast was removed I continually harassed the surgeon regarding my return to work. He finally agreed and I returned to full duties, except I couldn't drive for six months. The surgery and cast were traumatic enough for me to deal with, but I was not prepared for my dealings with Becker Milk or the Workers' Compensation Board.

When I returned to work, I was continually questioned on a daily basis as to how I was feeling. When I had a specialist appointment for a checkup on my back, I was told to bring a doctor's letter to confirm my appointment when other employees were not required to follow this criterion. My paperwork was questioned on numerous occasions but was found to be correct. Over the next few months I physically worsened and was having trouble walking, so the doctor took me off work. When I had been off work three weeks, I was mailed my separation papers after 12 years of employment. I phoned the personnel manager and asked him about relocation within the company and he informed me I was being terminated because I was a liability to the company.

Workers' Compensation then decided I was a candidate for retraining. I wanted to take a three-year course at St Lawrence College, but my worker informed me that my injury did not warrant the expense of this course. Instead, I was enrolled at a local business school, which I attended under duress. I told my worker I wouldn't learn anything at the business school because I already had knowledge of every course I was enrolled in. His response was to attend or lose my benefits.

During my attendance at this school, I once again physically worsened and had to complete my remaining subjects at home. When I completed the business school, I was admitted to the rehab wing at Kingston General Hospital, where I stayed for four months. Upon my release from hospital, WCB decided that I should be assessed at their Downsview hospital. I had that experience on two occasions before it was decided I was eligible for a 30% pension. I later applied, at my doctor's suggestion, for a higher percentage and was elevated to 35%. The board also informed me at that time that in order to receive a higher percentage I would have to have more surgery.

Up to this point, the process has been very demeaning. I have tried on many occasions to return to the workforce and hold a part-time job. I found when I mentioned to an employer during an interview that I was on a pension through WCB I did not get the position. I learned to be dishonest and not mention it. When I did manage to gain employment, I could only work a month or two before I became physically incapacitated and had to quit. My

doctors have suggested that I do not work in order to enjoy some quality of life without relapsing.

I live with chronic pain. I have osteoarthritis in my back, neck and right knee. In the future I will require more back surgery and I was recently told I will be a candidate for a hip replacement — not a lot to look forward to, but I try to maintain a positive attitude.

My story is trivial compared to some stories I have heard from other injured workers, but we all share the same day-to-day struggle to survive on a WCB pension. I fear that under the new legislation the stories will be tragically worse.

Contrary to popular belief, we do not ask to be injured, and it is difficult to survive, physically and monetarily. The corporate media have worked at developing the myth that injured workers are lazy and overcompensated. At the same time, Ontario employers enjoy WC premiums which are lower than those in two thirds of North American jurisdictions.

After reading Bill 99, I did not glean a sense of fairness towards the employees in Ontario. The government implies that Ontario will be the safest province in which to be employed. My perspective is that claims may be reduced, but injuries won't. Workers will have the option of filing a claim or retaining their jobs. There are too many areas open for employer abuse.

The elimination of the Occupational Disease Panel is very troubling. This panel provides invaluable research regarding occupational diseases and their causes. Workers will suffer and have no recourse to apply for benefits.

I am sharing my allocated time, so I will close with a final word to the Tory members. As you sit at Queen's Park, please consider the less fortunate and reflect on what you would do if you became injured. People feel that Ontario is crumbling. Your attack on health care, education, housing, social services and workers' rights have people fearful of the future. I suggest the Progressive Conservative government stop trying to rule this province and get back to the business of governing.

**Mrs Beate Wildraut:** My name is Beate Wildraut, president of the S-D-G centre for injured workers.

**The Chair:** Just a moment, please; I'm just checking. We thought we had you slotted for your own space at 2:50 this afternoon. Are you withdrawing from that spot?

**Mrs Wildraut:** No. We are sharing our time. But if you don't mind, I have a teenager who has written an essay. I would rather like to give her this time.

**The Chair:** That's fine.

**Miss Nancy Wildraut:** Hi. My name is Nancy Wildraut. I'm the daughter of Beate Wildraut. My mom is an injured worker; she has a bad back. She was injured in 1988, when I was about eight years old. Growing up with an injured worker is very hard because we had to learn to do more stuff around the house earlier than anything. We had to help out with the dishes, the cleaning, vacuuming, washing walls, washing windows. In wintertime my mom would have to stay at home while my dad took us tobogganing and skating, because my mom was always afraid of falling down and hurting herself again.



There were days when my mom couldn't get out of bed and other days when I had to help my mom get dressed in the morning. It made my mom feel really bad because she didn't want to count on me and my sister having to help her get dressed and stuff like that. As the years went on, we ended up doing most of the stuff around the house. We were doing things without even realizing it.

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Now that I think back to everything that has happened, my sister and I had to mature faster because we had to deal with the stress of thinking: "When mom wakes up in the morning, is she going to be able to get out of bed? Is she going to have to go into the hospital and have surgery again?" It was always on our minds if that would happen. My mom always told us that she wanted to have children to love, not to be slaves to do all her stuff for her around the house. Living with an injured worker is very emotionally stressful and physically draining, because some days we didn't know whether she would be able to get out of bed. Sometimes I would cry and pray to God to give my mom a new back, because we knew she was in a great deal of pain.

All I hope is that people understand that no matter if the injured worker receives money or has an operation to help take the pain away, it doesn't do anything. Taking away a person's ability to work makes the person feel like shit because they have to depend on others for everything. If WCB is privatized, that will take away what pride injured workers have.

**The Chair:** Thank you. We have two minutes for each caucus, time for a brief question and answer, and we begin with the Liberal caucus.

**Mr Gerretsen:** Thank you very much. In all the discussions about injured workers, we don't often hear about how it affects the rest of the family. It affects much more than just the person. You've certainly indicated that in your presentation very movingly, and hopefully it will make a difference somewhere down the line.

One of the things I should say about Evelyn King to the other members of the committee is that she is extremely active in a number of different organizations here in the Kingston area to make sure that everyone's life is a little bit better. Evelyn, we all appreciate that.

You've pointed out a problem. I'm a lawyer by profession and I used to represent a fair number of injured workers in the appeal process. I was always amazed at how long it took to get hearings. A wait of a year, a year and a half, was absolutely nothing. Your presentation highlighted that, how you get bounced back and forth to the board for this, for that, for the other thing. How would you describe that feeling? I would imagine it was quite demeaning.

**Ms King:** It was. I didn't mention all the cheques that were late because doctors' letters got lost, that whole gamut. That's another story. But that's what goes on. When my doctors suggested that I appeal for a higher percentage, the old meat list they have — I can't work, yet in their eyes I'm only disabled 35%. Some days I don't get out of bed.

**Mr Gerretsen:** So If we're talking about reform of the system, we have to reform the process so people get justice a lot quicker than they do right now in the compensation system.

**Mr Patten:** Those were very moving thoughts you shared with us. It dramatically demonstrates what happens to a whole family, that nobody is alone, that they have friends and families, sons and daughters, who have to bear the responsibility as well. I think it's important to bring up the human dimension, because that's what it's supposed to be all about. This is supposed to be providing support with dignity to injured workers. We're going the other way, in my opinion. We are starting to look at a system now which will be an insurance company. As any of you who have dealt with insurance companies know they're always trying to beat you down and give you as little money as possible for what you have lost through theft or whatever it may be, any accident claim. It happens all the time.

Anyway, I want to thank you very much for being here today.

**Mr Bisson:** Nancy, I appreciate your coming forward, because as most of we MPPs would know from the work we do in our constituency offices, we normally see the injured worker or their spouse; that's normally who we're dealing with. For the years I've been dealing with workers' compensation, I've always tried to come to terms with that whole issue. I come from a mining community; the injuries you see are often fairly traumatic. Even in cases where compensation is paid, there's a whole loss of pride issue that the worker goes through: "I was a big, strong individual. I was a miner," or "I worked in the forest industry. I can't work any more." They stay at home and it's pressures at home, fights at home; it sometimes turns into alcoholism, wife abuse, all kinds of things — I'm not saying in all cases, but in a significant number.

It's not often that we get the chance to see the kids of the injured workers come in to tell their side of the story. That's something this committee appreciates. I'm sure it left an impact, and not only on me. It certainly left an impact on the government, because I was looking at a few of the members on the other side, who understood, maybe for the first time, that for an injured worker when we're talking about compensation it's not just about the unfunded liability; it's the human deficit that people talk about. Thank you for bringing that forward.

**Mr O'Toole:** Thank you very much, Nancy, for a very impassioned story and a true story, which makes it so much more real, and thank you to Evelyn. Starting with John and the last presentation, really important to me is to see and hear the injured workers. The advocate groups, whether it's for the employers or the union, organized or non-organized — the individual stories are very important. It says to me that the system today and the anxiety — Mr Gerretsen referred to it. I don't blame him for those delays, the year and a half for the appeals. Those aren't fair to real injury cases, those delays caused by —

**Ms King:** If you're talking about fairness, why don't you dump this bill? That would be fair: if you dump this bill.

**Mr O'Toole:** I believe the appeal periods and the periods for filing are shortening up the process, which would get the benefits to the injured worker quicker. That's what I personally want, that the injured worker get —

**Ms King:** They're going to get worse under this new bill.

**Mr O'Toole:** I just wanted to make sure that your story, Evelyn, was heard; the car accident in your duties of work. Your attitude: I can still see the sparkle of attitude towards wanting to work. That's still obvious. I believe you said your accident was in 1979. No one, on any side, takes any pleasure or any sense of purpose for an accident, an unexplained event —

**Ms King:** That's exactly what we're saying, and with this bill you're going to hurt more workers.

**Mr O'Toole:** I think there's a lot of language in this legislation about prevention.

**Ms King:** Oh, boy. You just don't get it.

**Mr O'Toole:** Nancy, there's a youth awareness program in the high schools and community colleges now about occupational hazards in the workplace. I think individuals need to more aware of potential hazards in the workplace.

**Ms King:** I think you need to go through the bill yourself. Maybe you might get the point if you injured yourself. Then you might understand what's going on.

**Miss Wildraut:** I have one last thing to say. I just graduated from high school. We did not learn anything in high school about safety in the workplace except for when I had my mother come into my business English class to talk about it. That's the only time we ever learned anything about health and safety. High schools do not provide that kind of education any more.

**Mr O'Toole:** That's just been introduced. But you're right: Awareness on both sides is important. The employer, who creates the safe workplace, has to take more responsibility, and the individual employee has to have the opportunity to know.

**Ms King:** Why will they, when in this bill they've got all the power? Workers don't have any power.

**The Chair:** Thank you very much. On behalf of members of the committee, we appreciate your coming before us this morning with your views.

**Mr Bisson:** Chair, I thought finally, after the last two presentations, that the government side was starting to get it, but it's pretty damned obvious that they're not.

**The Chair:** Mr Bisson, you're out of order.

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## CANADIAN AUTO WORKERS, LOCAL 222

**The Chair:** I call representatives of the Canadian Auto Workers.

*Interjection.*

**The Chair:** Mr Bisson, come to order, please. We have guests before our committee awaiting their presentation time. Would you please show courtesy to our guests.

I apologize. Welcome to the committee. We appreciate your coming this morning.

**Mr Jim Freeman:** First of all, we'd like to thank the committee for allowing us this opportunity to make the presentation. It's too bad we had to drive all the way to Kingston.

My name is Jim Freeman. I'm from Local 222 in Oshawa. I'm the chair of the political education committee. With me is Larry O'Connor; he's the vice-chair of the political education committee.

**Mr Christopherson:** And a former MPP, and a damned good one at that.

**Mr Freeman:** A little plug.

This submission is presented on behalf of the over 25,000 members of the Canadian Auto Workers Union, Local 222 in Oshawa. It is the view of the CAW membership of Local 222 that the changes proposed in Bill 99 are being driven for purely ideological and fiscal reasons, much like other changes that have been introduced by this government.

Ontario entered the automobile manufacturing age in Oshawa during the beginning of this century with the movement of the McLaughlin Carriage Works from Tyrone. With men and women working long hours in poor working conditions, injuries in the workplace began to happen. The workers of the day began to pressure the Ontario government to start protecting their family income due to lost-time injuries. On April 28, 1914, the Workmen's Compensation Act was passed in the Ontario Legislature. This legislation worked because, while workers gave up the right to sue an employer over an accident, in return they got the right to prompt and fair compensation. It was introduced because it was good for the working people of Ontario and made good business sense.

The roots of our local union began with the struggles from the late 1920s. Workers in Oshawa fought with General Motors to improve working conditions in the union's first negotiated collective agreement in 1937. These struggles represent our role in the history of organized labour, along with other unions across the province that worked with government to create minimum work standards for all working people in Ontario.

The base of industrial labour laws and regulations in Ontario has been achieved through a broad consensus that exists in advanced industrial societies. These laws have created an effective, equitable floor of employment rights that are feasible, while being both socially and economically beneficial.

This Conservative government views legislative standards, regulations and the various other roles of government enforcement as causing a stranglehold on people doing business in Ontario. We do not believe for a minute that our current Workers' Compensation Act or any other employment standards legislation has prevented businesses like General Motors from earning huge profits in Ontario. Bill 99 is nothing more than legislative tinkering with workers' rights, with the sole purpose of giving in to the demands of Bay Street boardrooms and the large multinational corporations in light of the changing global economic circumstances.



Our local has over 60 years of experience in helping and fighting for injured workers' benefits and legislative rights under current laws of the province. We view Bill 99 as an attack on the Workers' Compensation Act and the workers the original act was designed to protect. We hope this committee will draw on the decades of knowledge our local has gained as a result of representing workers who have been injured in the workplace.

Workers' Compensation has a proud history in Ontario, stemming from a deal more than 80 years ago in which workers gave up their right to sue an employer over an accident in return for prompt, fair compensation. Time will be the judge of how much damage this legislation will cause to the gains made over the course of the 20th century. To our membership of 25,000, this bill is obviously a Conservative government attack on workers' compensation benefits and the rights of injured workers. To add insult, this government is taking \$15 billion from injured workers and giving \$6 billion to employers in assessment reductions.

When Bill 99, the Workers' Compensation Reform Act, was introduced on November 26, 1996, Labour Minister Elizabeth Witmer said there would be province-wide public hearings in early 1997. We understood the government wanted these changes to take effect on July 1. Our membership is pleased that the deadline has been extended. This committee needs to start by listening to all the parties affected by this bill, then recommend it die on the order paper.

The details of the act make it obvious that this government enjoys putting spin control into the titles of its bills, like calling a reduction of employment standards the Employment Standards Improvement Act. This is no time for spin doctors or for your government to be in a hurry.

When the minister introduced the bill, she referred to the unfunded liability as one of the main reasons for the changes to the act. The fact is, the Ontario Workers' Compensation Board is very profitable, with a \$510-million profit in 1995. The board currently has \$8 billion in the bank and offers premium rates to employers that are lower than in two thirds of North American jurisdictions.

This committee and the public need to know that the unfunded liability is moving towards retirement without the changes being proposed in this bill. The reforms by the NDP government put an end to the crisis in WCB funding. Under the last government, the unfunded liability stopped growing and started to shrink. We feel that this is the result of good government controls being put in place, and under no circumstance should this pool of money be handed over to the private sector.

Unfortunately, before Bill 99 was introduced, the WCB assessment to employers was cut by 5%, effective January 1 of this year. This will add \$6 billion to the board's unfunded liability; this is according to the government's estimates. If the minister is truly concerned about the unfunded liability, this assessment rate reduction must be overturned immediately.

**Mr Larry O'Connor:** Here are some of the areas that we find most troubling within Bill 99.

Right at the beginning, in the explanatory note, sort of the purpose clause: changing the name of the WCB to the Workplace Safety and Insurance Board, eliminating the word "compensation." This change drops two very important words, "worker" and "compensation." Does this government really have a problem recognizing the value of our workers? Does this government not believe in compensating the value of these workers when injured on the job? No more mention of workers; no more mention of compensation.

Part II, section 6: This is problematic because we feel the safe workplace associations will be strictly a tool of the employer. They would have the power to determine who sits on joint health and safety committees, the frequency of meetings, the inspection schedules and, most unbelievably, they may even be subjected to fewer, if any, Ministry of Labour inspections.

Part III, section 12: This takes away the right to compensation for occupational stress that is not caused by an unexpected traumatic event. The only recourse for a worker in this situation may be to go to court. The original act was created to eliminate the need for workers and employers to go to court. Now it looks like the recommended choice by this government is back to the courts. We suggest that this section of the bill does nothing but allow employers to harass and intimidate workers.

Part III, section 13: This cuts off workers' compensation for chronic pain after the "usual healing time," whatever that is. Never in Ontario's history has a government been so willing to all of a sudden start prescribing where the doctors prescribe. Never has there been one so willing to second-guess the physicians of this province. People are going to notice the infringement of medical confidentiality, requiring injured workers to consent in advance to release of their records. This appears to be the starting point of another government-created meat chart through regulations we haven't seen. Our fear is that the employer will force the injured worker to return to work before an appropriate healing time. The heavy assembly line work that our members do in Oshawa, for example, at General Motors, shouldn't be compared to other work.

Part V: This section of the bill is missing subsection 103.1(3) of the old bill. This included the templates of best practices. In the past, employers were evaluated on a regular basis as to their prevention programs and return-to-work practices. This change appears to make it more profitable to skew statistics than to prevent accidents. Is this part of the government's overall plan to make Ontario the safest place on earth, on paper only?

Part VI, subsection 43(2): This cuts benefits to 85% of net average earnings from the current 90%. How can this government expect a worker injured in his or her workplace to take such a large cut in benefits simply to allow this Conservative government to give a generous kickback and financial break to the employers, the companies?

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Part VI, subsection 45(2): This will slice retirement pensions in half, because the WCB contributions are being reduced to 5% of the worker's pension from the current

10%. While future income of workers is limited because of workplace injuries, now this government is planning to dip into their pensions. These changes can have the effect of forcing the very vulnerable to live on a pension reduced by half, which will force many to accept social assistance benefits at age 65 so they can have something to live on. This is simply another way of offloading to the taxpayers, the municipal taxpayers in this case, because this cut is going to affect social assistance.

Part VI, section 49: This reduces the cost-of-living protection for almost all injured workers, including older unemployed injured workers who currently have 100% inflation protection. The new indexation formula will be half the consumer price index minus 1%, with a cap of 4%. This means that if inflation is 4%, the pension will increase by 1%. This also means that younger disabled workers will see their purchasing power go down very rapidly. In the 1994 round of reforms to the WCB, changes to indexing meant more money to the most vulnerable injured workers. More than 45,000 of them got an extra \$200 a month, which helped lift many of them out of poverty. Injured workers with 100% disability, as well as spouses and children of workers killed on the job, will still have full inflation protection. For that small allowance, I guess we're grateful.

Part XI, section 114: This limits the ability of the Workers' Compensation Appeals Tribunal to provide justice for injured workers treated unfairly by the board. This committee has heard or will hear from many elected representatives of the CAW and other unions that these people have had to make presentation after presentation to WCAT on behalf of injured workers. This is the only recourse for injured workers, and unfortunately many of them aren't aware of the WCAT process until a major problem with their claim has arisen. A 30-day limitation will be a major problem. We don't feel this government has given the working people proper notification of the effects of this amendment which will limit the independence of the Workers' Compensation Appeals Tribunal, making it harder for injured workers to get justice if they are not treated fairly by the WCB.

Parts XII and XIII abolish the Occupational Disease Panel, with its responsibilities handed back to the board. The bill describes the running of the board, but the work of this most important panel is not included. This committee needs to recognize that the reason this panel was originally set up separately was because the board didn't have the credibility to do the independent research looking into occupational diseases. The panel is respected internationally, and appeals have been coming from around the world in letters and articles in specialized journals calling on the government to save it. We can't believe this Tory government would get rid of this respected agency.

We have some recommendations, and I don't think you often get recommendations at this committee, because most of them are telling you just to scrap it.

(1) Our number one suggestion is that this bill die on the order paper, and then start over again with meaningful consultation.

(2) Any future legislative changes should only happen after truly public dialogue. Hearings need to be an exchange of ideas and knowledge so that future changes are made in the best interests of all affected parties, and in that case it means people.

(3) The concerns about the employers' assessment rates and the unfunded liability means that the assessment rate reduction which has already been put in place needs to be overturned immediately.

**Mr Freeman:** We just have a bit of a closing statement too. In the past when a government planned reforms to labour legislation, they were usually endorsed by the Ontario Federation of Labour. This happened because the government would start with a meaningful consultation process. The government needs to hear the message that taking money from injured workers and lowering incentives for employers to make workplaces safer is no way to make Ontario a better place to live. Reforms in the past were based on negotiations between business and labour. This government has shut workers out of the process.

We view this WCB legislation as just part of a coordinated attack on Occupational Health and Safety protection for workers in Ontario. The labour minister has announced plans for a full-scale review beginning this fall of the Occupational Health and Safety Act, and we know what that means: Employers want to attack the right to refuse unsafe work.

This is the Tory agenda: Lower the standard of living of working and middle-class families and reward your friends. This government doesn't have the courage to just call it like it is — ideology — so the minister throws up a smokescreen, talking about return-to-work incentives, prevention, self-reliance, that kind of thing, but smokescreens don't always work.

**The Chair:** We have time for a brief question and answer from each caucus, and it is brief, please, beginning with the third party.

**Mr Christopherson:** Thank you very much for your presentations. Welcome back, Larry; good to see you always. I want to go to something we haven't yet talked about, I don't believe, other than — oh, we did on the opening day, but we haven't returned to it since.

You talk about occupational stress. I think it's really important for us to listen to what some of the employer consultants are saying about occupational stress. You say in here, and rightly, "The only recourse for a worker in this situation," meaning eliminating it from the law, "may be to go to court." We all know that going to court is not a winner for working people because of the time it takes, the money it takes, and they can't afford the loss in income. But the employers, at least their high-priced consultants, are worried about this too. They're making a recommendation that stress be included and then limited so narrowly that no one would qualify.

The reason for that is they want to take benefit from the part of the law that prohibits working people from taking employers to court, and they could possibly, if stress were eliminated from the law, because you could argue, "It's not part of the compensation package, so yes, I'm going to



take it to court." The plan is to ask the government to include it so it's part of the "No, you can't sue" rule, but then make it so tight that no injured worker is going to get through. I appreciate your raising it this way, because we need to keep an eye on that and see if that amendment comes through from the government. That's an argument being made to them.

The other thing I'm really glad you raised — you can tell you've been around, Larry; it all shows — is that you're mentioning the name change. We haven't talked about that enough. It does take out the words "worker" and "compensation." They want to put this in the world of insurance is what it looks like to us. We know they want to privatize it. Whether they do it right away or a little bit at a time, that's their goal. They want to privatize everything in the public sector, this one because there's big money for them. The fact that they take out the word "compensation" starts to bring in the insurance rules. This is a separate set of rules; injured workers need to be treated differently from any kind of insurance plan. It looks to us like the name change is meant to do that. I would gather you have raised that in here to make that point yourself.

**Mr O'Connor:** In fact, if you look at the dollars element of this and taking it out of government involvement, I don't think the banks need to play with any more money right now, frankly. They've got enough money and they're making enough profit. This money belongs to injured workers, and that's where it should stay.

**Mr Hastings:** Thank you very much, Mr O'Connor, for your interesting and intriguing presentation. Unfortunately, it starts with the wrong analysis as to our motivation and everything else that you've laid out.

For example, you say in the brief — and I've seen it in so many other briefs from representatives of the labour movement, whether a local of auto or steel or communications, energy, what have you — that the WCB is one of the most profitable companies in Ontario. I'm completely mystified as to how you could figure out that it can be profitable if it's losing money. However, be that as it may, it is a monopoly that collects a huge amount of assessment, over \$2 billion a year —

**Mr Bisson:** What part of mathematics don't you understand? Do you need a computer?

**Mr Hastings:** Madam Chair, do I have the floor? It would be interesting if for once, just for once, the member from Timmins could lower his voice, relax a little — the stress levels must be getting to him completely — and allow other viewpoints to be heard.

**Mr Bisson:** It's a job of stress to endure this government.

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**Mr Hastings:** You see? This is what they define as democracy. When you make viewpoints that are opposite to theirs, there's a complete lack of acceptance of certain realities.

One of the realities I would like to ask you about is why, under this submission and others from your locals, you are so willing and so passive in accepting, for lack of

better words that fail me, the completely unsuccessful current arrangement for job placement with the vocational rehabilitation people that we have had for the last, oh, I guess 30 or 35 years, where they've tried to make different arrangements either on a voluntary or on a mandatory reinstatement clause to get injured workers back to work.

I'd also like to know how you can construe your rhetoric to say this bill is an attack on injured workers. When we look back to when you were an MPP and look at the actual report of such a marvellous organization as the WCB — which you are defending as the status quo, which you accept so much — and you look at the unfunded liability or whatever you want to call it and deny that there isn't under this existing act, which we want to amend, an obligation on the part of society to help injured workers to pay for their existing pensions for future total temporary compensation and all the other arrangements.

From 1995 —

**The Chair:** Briefly, Mr Hastings.

**Mr Hastings:** Actually, from 1995 right back to 1986, this organization, which you call one of the most profitable —

**Mr O'Connor:** We didn't say that.

**Mr Hastings:** Well, it's right in the brief. This thing is in fact running a deficit, which is not just financial, economic, social but is a human deficit when you jeopardize all the future employees of this province who could get injured in the workplace of this province. Your comments, please.

**Mr O'Connor:** Thank you very much. I was hoping I was going to have an opportunity to respond. First of all, I'm not saying the job placement elements are the best there are in the current legislation, but I don't see a heck of a lot of improvement here. Where's the improvement in what you're presenting? It isn't here.

You say they're not making any money. Well, \$510 million may not be a lot a money for the government, but for injured workers that would go a long way to helping a heck of a lot of people. The year before, what was it, about \$490-something million? That's a lot of money. It may not be the most profitable corporation in Ontario, but that ain't bad at all.

I'm not calling for the status quo. If you read the recommendations we've presented, we're suggesting that there be meaningful consultation. These people want to talk to you. These people want to have a voice. Go around the province and listen to them.

**Mr Gerretsen:** I like your third recommendation. If there's such concern in the government about the unfunded liability, why are they giving employers a rate break? It's a little bit like the other one, which follows right on top of that and which really drives this whole government: If they're so concerned about the deficit and debt in this province, why are they giving a tax cut? That's one I've never been able to understand.

I think we're overly concerned about the unfunded liability. We used to get this all the time at the municipal level as well. It is not as if at any given moment you have to pay out all of this money. That is just a total

smokescreen, and governments of all types will use it whenever it suits them. They're certainly trying that on that side.

**Mr Patten:** This has been said many times, and I'd like to underline your concern. In response to Mr Hastings's question, I think the injured workers have been saying, "Why didn't you talk to us?" I have never heard any of them say, "We don't want any changes to the Workers' Compensation Board." People have said, "These things are taking too long."

In my opinion, had the government sat down at the beginning and said, "Look. This is the Workers' Compensation Board" — obviously the first people they should be speaking to are injured workers, asking, "How can we improve this?" They never did, and I think that's part of the problem, that they just spoke to employers. Do you agree with that?

**Mr Freeman:** Yes, we agree with that. In our local union we employ three full-time reps we pay out of our dues to represent injured workers at WCB. They realize there have to be changes. There's never going to be a perfect system and someone is always going to come up with new ideas to make the system better, but it's got to be made better for injured workers, not for employers. Employers are the ones who are causing the injuries. People don't go out and get run over by a train or anything else on purpose; people don't do that on purpose. That's why they call it an accident. If their workplace has caused them to be injured, they should be protected and their employer should pay — as simple as that.

Our local union probably pays out \$150,000 a year to representatives to represent people at WCB. Why? Because the employer fights every single case. Now when a person is injured they fight every single case. We have people now who are injured who don't even bother applying for WCB. They go on sick and accident benefits because it's easier, there's no hassle. They don't have to wait six months to get their money; they get it the following week. Mind you, down the road, three or four or five years, if they can't work any more they're out of luck. That's what it's coming to in this province.

**The Chair:** Gentlemen, thank you for coming before the committee with your advice this morning.

#### UNITED BROTHERHOOD OF CARPENTERS AND JOINERS, LOCAL 93

**The Chair:** I call representatives of the United Brotherhood of Carpenters, Local 93.

*Interjection.*

**The Chair:** Mr Bisson, kindly do not interrupt.

**Mr Sean McKenny:** Good morning. My name is Sean McKenny. I'm the director of training and programs for the United Brotherhood of Carpenters and Joiners, Local 93, in Ottawa. With me is Mr Doug Perrault, who often provides me with assistance in matters relating to health and safety and workers' compensation.

Changes to any law or laws or the implementation of a new law or laws that govern the people must, without

question, involve a thorough and comprehensive exploration of the effects those changes or implementation may cause. The purpose to any change or any implementation of law must be directed to bettering that which presently exists. That betterment cannot be solely focused towards one select group whereby another group is left with an effect that will most assuredly cause devastation.

The workers' compensation system must be reviewed; it needs to be reviewed. There is absolutely no question about that. That review must be a thorough review, where those directly affected are all part of the process. These hearings are an example of addressing the needs of one group; otherwise, those others who tried to be part of the process would not have been excluded. Still others, such as our organization, from a major city within the province, would not have to travel two hours to make a presentation. Kingston is a wonderful city; I didn't mean it that way. This government may use the term "review" in this instance, but we maintain that what is meant is, "We're going to do what we're going to do."

The underlying principle behind workers' compensation is to compensate workers for lost earnings as the result of work-related injuries and diseases. In exchange, workers relinquish the right to sue for workplace injuries. This is done through an employer-funded compensation system, although it could be argued that the system is not solely funded by employers, as the employer most assuredly takes his premium into account when negotiating wages. All of this is common knowledge, yet so common that it's often forgotten.

I look out among you and wonder how many have been on workers' comp in the past, especially this side. How many of you have lost a finger, a hand, wrenched a back so bad where the pain is so unbearable that surely to God death would be better, or had occupational disease or witnessed a fatality in a workplace?

**1110**

Someone you all know very well said in a speech he gave at a conference I was attending in Vancouver that he questioned how anyone could make an informed decision or formulate an accurate opinion if they have never put on the shoes of those whom that decision or formulated opinion most affects.

Bill 99 is certainly reflective of the above. Proposed changes, and I am coming to those, do nothing to enhance the system. I take that back. As I noted above, that enhancement is directly aimed at one at the expense of so many others.

The unfunded liability issue is one you've heard before. I'm not going to spend a lot of time on it, not because of its order of importance but because it is the underlying rationale this government has used to introduce the bill we're here about today. Yet we still maintain that the government's numbers don't add up and that if the present system was kept exactly as it is today the unfunded liability would be nil by the year 2014.

The bill provides that the worker must fill out a specific form to commence their claim. At present this can also be done by the worker's doctor and/or employer. In our sec-



tor, as in others, a varying degree of education levels and linguistic patterns exist. Some can't read or write. Some speak languages other than English. Will they be so intimidated by the paperwork that they don't bother? The simplicity of the paperwork has no bearing. Add the intimidation factor that's possibly created if the worker has to get the form or the paperwork from the employer.

The determination of average earnings must be re-examined when it comes to the construction sector. It makes absolutely no sense. If an employee is working at a negotiated wage rate, he or she must be compensated according to that rate and not — I'm going to repeat that for all of you — not what he or she had earned prior to that over a predetermined time.

Return-to-work provisions as outlined in subsections 41(1) and 41(2) do nothing for the construction sector, an apparent prejudicial omission that once again attacks the fundamental right to work that we as a people have.

I'm going to change gears for a moment. As I noted earlier, the importance of having worn the shoes of someone who has been there becomes important. I've been there; a lot of people you've heard from have been there. To hear is one thing, but to actually be there is something else. When I read this, it's from someone who knows, someone who's involved each and every day with individuals who are on compensation or who have been on compensation.

I was injured at a workplace and I've experienced the employer phoning me at home and asking me not to report the injury to compensation, telling me in effect: "Sean, stay at home. We'll courier your paycheque to you each and every week. Sean, don't report it." I've been in the situation after that injury where I returned to work, on a megaproject in the city of Ottawa, when I was working with the tools then — it was a megaproject to last at least two years — only to be fired the very next day after I returned. Grieve, complain, take it before a board or tribunal: For what? Never to be hired by that employer again? That's what our sector is about.

The bill adopts the use of the term "policy" in several instances. If policy in these instances has yet to be created, those same policies, which are administrative policies, will undoubtedly be elevated above the act. The act then in some instances, and because of the vagueness, becomes secondary and administrative policies become the primary governing legislation, negating the need to enact further legislation for change but simply to adopt an administrative policy to make that change.

The government's understanding of workers' compensation and the people it affects is made clear with the bill's mention of the reduction in benefits from 90% to 85%. The reasoning behind the changes, as they have been quoted, is to entice workers back to work and not have a system that makes it all too comfortable for those receiving benefits. This government and others, some others, must realize that 99.9% of us want to work. We want to work. This reduction, along with other changes, will simply pass costs from the province to municipalities and/or cities and other areas.

The construction sector has long lobbied governments around the issue of the underground economy. Bill 99 threatens to contribute to that economy by adding to the billions of dollars that are lost to governments and legitimate businesses each and every year.

In closing, I wish to thank the committee for allowing us the opportunity to speak this morning and leave what we think is a very important message to this provincial government. Gentlemen, as workers, as employers and as governments, we must work together. We must create an atmosphere that allows Ontario — I'll say it — to be truly open for business and not solely open to those in business.

**The Acting Chair (Mr W. Leo Jordan):** Thank you very much for your presentation. There will be about three minutes for each caucus, starting with the government.

**Mr Maves:** I want to say that the compensation system is something that has been looked at for years now. I'm sure your local, perhaps not you yourself, was around when 162 had public hearings and 165 had public hearings and had input into the royal commission. Input which was compiled to that point was taken into consideration. I don't know if you were someone who made a submission or returned a submission to Minister Jackson when he did his report on workers' compensation, but there was input there. And this is another way of getting public input, these public hearings. So I would argue that there has been quite a bit of input over the years on the compensation system.

You touched on the unfunded liability and questioned whether it's a problem or not. We had someone yesterday questioning it and comparing it to a pension fund. If it were a pension fund, as soon as it had an unfunded liability, they would be forced to put a plan in place to retire that unfunded liability, much the same as Bill 99. Under the Insurance Act, if they had an unfunded liability, that would be wound down. The federal insurance regulator would step in and wind it down.

The Provincial Auditor said it's a problem. The Liberals in their red book have said it's a problem. The NDP attempted to address it with 165, Minister Copen saying, "We have to get the unfunded liability under control because it threatens the whole system."

I think there's a large degree of agreement that the unfunded liability is a problem. It's still a problem, and the bill is attempting to address it.

Getting the form from the employer: I still disagree with the contention that continues to be made, because there's nothing in the bill that says you have to get a form from the employer.

Right to work: You said that the government made an omission and ignored the construction industry.

**Mr McKenny:** Right to work is not a term —

**Mr Maves:** Return to work. Subsection 40(3) says: "Employers engaged primarily in construction and workers who perform construction work shall cooperate in a worker's early and safe return to work and shall do so in accordance with such requirements as may be prescribed."

The construction industry was expressly recognized by that section as being different, as having different chal-

lenges with return to work. I can assure you, as I've assured other construction trades councils, that COCA, the construction trades council and the Ministry of Labour are currently working at developing those regulations.

Those are some of the things I picked out from your presentation that I just wanted to comment on.

**Mr McKenny:** Can I respond to that just briefly, and I'm going to pass some of this over to Doug? I'm doing most of the speaking. In the first instance, one thing we've all noticed is the present government's attempts, falsely the majority of times, to portray themselves as being open and accessible to a lot of the people and a lot of the groups. My understanding, and you jump in here if I'm wrong, is that somewhere around 1,200 people applied for standing. I'm from Ottawa. Ottawa is a big city. I mentioned before that Kingston is a very nice city and I'm glad to be here in that respect. But it's just mind-boggling: How come something didn't happen in Ottawa?

Let me finish. You had your opportunity.

**Mr Maves:** I didn't say a word. You did invite me to jump in, though.

**Mr McKenny:** If there were 1,200 people and yet only a handful of people were selected to actually make presentations, I don't call that open. I suppose we have quite a difference of opinion on that.

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**Mr Patten:** Thank you for your presentation. I come from Ottawa too so I know the problem. We don't have enough days to be able to meet. We've said every time we've met that we wanted more time to do so, so I'm with you on that one.

You've identified a variety of areas that throw up obstacles. Is there anything in this bill that you see that facilitates the recipient of any form or aspect of compensation with dignity?

**Mr McKenny:** I have to answer that I don't. It's not a good bill. It does not do a lot to help workers in any way at all. In fact, what it's doing is driving a further wedge into an already existing blockade between employers and employees within this province. That's unfortunate, but perhaps it's part of the present government's overall objective. I don't know.

**Mr Patten:** Sean, when you talked about your own personal experience, about your employer suggesting that you not report your accident, do you think this bill will tend to alleviate employers doing that or do you think this will exacerbate it?

**Mr McKenny:** Oh, man, it's going to make it so much worse. It's scary, it really and truly is scary. There is not in our sector a lot of work these days; it's picking up to some degree, but there's not a lot of work. People who get jobs are hesitant to complain about anything because they know what the outcome of a complaint is going to be, especially when it has to do with worker's comp, and that is a pink slip.

**Mr Christopherson:** Thank you very much for your presentation. I want to ask you about process, because it comes up everywhere we go in terms of the lack of input. You're right, we should be in Ottawa, and if the parlia-

mentary assistant wants to say today that we'll go off to Ottawa, I'm prepared and I'm sure my colleagues in the other opposition party are quite prepared to pack up tonight and go to Ottawa tomorrow and hold some hearings. For that matter, let's keep on going next week and the week after and give everybody an opportunity to be heard.

Six days is all they set aside. It needs to be on the record: Bill 49 was changes to the Employment Standards Act, and for those workers who don't have the benefit of a union, as you know, the Employment Standards Act is the workers' bill of rights. That's all that's out there. Without that, they've got no protection. This government introduced Bill 49 and said it was minor housekeeping changes. That was so patently untrue that we shamed them into public hearings: Four weeks they agreed to on a bill that they said was minor housekeeping. But because they got beat up so bad, when they brought in their attack on injured workers, Bill 99, they only gave it six days. It's absolute BS when they say that there has been all kinds of input.

This government takes pride in the fact that they killed the royal commission, which was a public process, which gave everybody an opportunity to have input, and they killed it. I'd like to hear your thoughts on the difference between the royal commission continuing its work versus the six days this government has offered.

**Mr McKenny:** I just want to add one thing and then I'll let Doug answer that. I want to make one thing clear in regard to this presentation. Our international general president made reference at a conference that when the United Brotherhood of Carpenters speak, they in fact speak for not only the unionized sector but the non-unionized sector as well. You guys keep that in mind. It's not just the unionized sector we're making the presentation for; it's for the non-union as well. It's for the people.

**Mr Doug Perrault:** Just further to a couple of points:

I have in my hands here a petition we've brought along, with 150 more names of people who have asked for public hearings in Ottawa. I'll leave that with the Chair.

Some of the things that Mr Maves brought up — he was talking about the construction trades. Whenever we make a presentation like this, we seem to be targeted for being picked up on mistakes or that we're not clear on something. I'd just like to point out that the construction trades — that only applies to 20 or more people in the workplace, where an employer has 20 or more employees. Most employers either have a lot less than 20 or are subcontracting out the work, so all these people are going to be excluded anyway. To talk both sides of the fence and say, "We've looked at the issue" — really, you haven't, because all these people are still excluded.

We've touched on the public hearing issue.

I think we're missing the point on the real issue of these forms. Language is a big issue in the workplace. We've just had the best program cancelled by the government which looked at literacy in the workplace. We have a real problem with intimidation in the workplace. A lot of the construction trades are new immigrants to Canada; they're not really sure about what their rights are; they've never



gotten any training in it. We really need to understand that a lot of people are going to be excluded from comp just because they're too afraid to fill out the forms or know how to do it.

**The Acting Chair:** Thank you very much.

NORTHUMBERLAND COMMUNITY  
LEGAL CENTRE  
WORKERS' COMPENSATION CLINIC  
ADVOCACY GROUP EAST

**The Acting Chair:** Will those representing the Northumberland Community Legal Centre please come forward.

**Mr Garth Dee:** My name is Garth Dee I'm a lawyer with the Northumberland Community Legal Centre. The Northumberland Community Legal Centre is also part of the Workers' Compensation Clinic Advocacy Group East, and with me today is Gary Stein to speak on behalf of the workers' compensation advocacy group.

In addition to being a lawyer with the Northumberland Community Legal Centre now, I'm a former director of benefits policy at the Workers' Compensation Board and I've been employed as counsel with the Workers' Compensation Appeals Tribunal and written extensively on workers' compensation.

I wish to focus on two elements here today that may not have got as much attention as some of the other matters. This has to do with, what is the actual state of affairs of the WCB's finances? I want to take you through some of the aspects of that financial reporting. Second, I want to take about the effects of change, just change itself, not these particular amendments in detail, but I want to talk about that. The advocacy group will talk about the impact of these changes more particularly on injured workers.

Perhaps the one thing I want to dwell on the most is that when you look at the balance sheet of the Workers' Compensation Board and you look at how they report the value of their investments, it's important to realize that the WCB does not report the value of its investments on its balance sheet at their market value. They report them at what they know as their carrying value. In the notes to the financial statements, it explains what the difference is between the market value and the carrying value.

At the end of 1996, the market value of the assets was \$1.476 billion higher than the carrying value. I think we all agree that the best way to value something, especially financial assets, is what the market will bear for them. It's important to realize that the balance sheet as it presently is underreports those assets by close to \$1.5 billion. Not only that, but there's been a huge increase in the discrepancy between the market value and the carrying value over the last couple of years; that difference between the two of them has been growing dramatically. I want to go through with you what the effect of this is, not only on the balance sheet of the WCB but on the annual income statements of the WCB.

If you start with the balance sheet and you deduct \$1.476 billion approximately from the unfunded liability,

you'd find that the unfunded liability is about \$8.99 billion and not \$10.46 billion as reported at the end of 1996. You'd also find that if you took the 1987 unfunded liability of \$6.691 billion and escalated it by the consumer price index, that unfunded liability in 1997 dollars is \$8.66 billion. So you can see that between 1987 and 1997 the unfunded liability has remained virtually the same in constant dollars.

I'm not saying that's not a problem that needs to be dealt with. I am saying that it's not the runaway financial crisis that it's being played up to be. It's important to realize what dollars we're actually talking about.

I want to take a look at the market value and its effect on annual income statements, particularly those assets that don't show up on the balance sheet and don't show up on the annual revenue statements. On the top of page 4, I've put the carrying values and market values of the WCB's assets and investments. In 1994, the difference between those two values was \$389 million. By the time you get to 1996, the difference is \$1.476 billion. You can see that growth going up dramatically in the discrepancy between the actual value and the reported value.

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If you start to put those unreported increases into the annual income, and I've done that in the second chart on that page, you can see that the operating surplus in 1995 was not \$510 million; it was \$1.086 billion. The financial position of the board in 1995 improved by over \$1 billion, almost \$1.1 billion. In 1996, it improved by \$943 million. The scale of these numbers needs to be appreciated. The WCB made more money in 1995 and more money in 1996 than any other organization in the province: banks, major corporations, anybody. They're at the top of the pile.

The second aspect is the reporting of liabilities. In the reporting of liabilities, the board has to use what is known as the discount rate to calculate future liabilities. I won't review exactly what the discount rate is. I hope by this stage in the proceedings everybody is familiar with what a discount rate is. If not, I suggest you go learn it. I'm not being flippant here; I truly hope you understand how the board calculates its liabilities.

It's calculated on a 3% net rate of return; the board expects to make 3% more on its investments than the rate of inflation. If that number goes up, the liabilities go down; if that number goes down, the liabilities go up. If you look at the board's actual rate of return, 10-year averages, as reported over the last three years, and this is reported above inflation, it is 8.3% for 1993, 7.0% for 1994 and 7.2% for 1995.

If you look at the discount rates used by other workers' compensation boards—I obtained these numbers from the British Columbia Workers' Compensation Board, which just recently did a survey of these numbers—you can see that the discount rates range from 3% at the low end up to 4.75% and 6%, with a fair number at 3.5% or 4%. I believe it is completely fair and legitimate for people to question the board's use of a very conservative 3% rate to calculate the discount rate. It is fully justifiable to do what

other compensation boards have done and raise that discount rate to 3.5% or 4%.

Knowing exactly what the impact of that would be on the board's reported liabilities is impossible for someone who doesn't have access to the board's actual liabilities, but based on the numbers associated with the changes when the Friedland formula was brought in, in my submission I believe about \$1 billion could be knocked off the unfunded liability by a change to a discount rate in the 3.5% range. However, I fully acknowledge that's a guess, without access to the board's actual liabilities.

The final thing I want to mention on that is that if you use a discount rate that reduces the unfunded liability by \$1 billion, you're at an unfunded liability of about \$8 billion at the end of 1996. Again, I'm not saying that's not a problem that you might want to deal with; however, it's not the disaster that people have been talking about. The funding ratio of the WCB, based on an unfunded liability of \$8 billion, is approximately 54%. It's not the 37% that's widely bandied about.

Finally, the other thing that's always mentioned in this alleged crisis over the WCB is that average assessment rate of \$3 per \$100 of payroll. That is a completely unjustifiable figure to be bandying about. You need to look at, what does it actually cost employers? You need to take a look at the net assessment rate once rebates for experience rating are included, and that number is around \$2.53 per \$100 of payroll.

The second topic I want to deal with very briefly, to leave some time for Gary, is the cost of change. The WCB has been a system in turmoil for the last 10 years. There have been five major changes in the governance of the board. Those changes have come along with changes to the senior administration of the board. I ask you to take a look at the annual report from 1990 and just X out the faces. They're all gone. There's nobody left from the senior management of the board, nobody left on the corporate governance level of the board. They've gone through major legislative changes. They've gone through major technological changes. All those things are tremendously disruptive. You would not find a major corporation anywhere that could survive those types of changes and that type of turmoil.

The changes to the benefit structure that are being proposed I would submit are change for change's sake. I'm talking here about doing away with FEL and temporary benefits. There was a major change in 1990 when this system was introduced. It took a long time for people to adjust. It took a long time for the board to adjust and it took a long time for employers and workers to adjust to this new reality.

If you look at the numbers, and I suggest you do this, if you go from 1990 to 1995, in each and every year, according to the board's own numbers, the percentage of permanently impaired is down, the percentage of the permanently impaired who are unemployed is down, the cost per injury is down, and it's consistent. It's year after year since 1990. What you're doing is taking that whole system

and throwing it up in the air. It's change for change's sake by eliminating those terms.

I realize there are some small problems — there are some very large problems — with the way FEL operates, but this kind of wholesale change, without studying why we are here in the first place — this isn't the first time what you're proposing now has been proposed. When Weiler first looked at this, this was the system he proposed. When he heard the submissions, he changed. He said: "Let's not do an open-ended process where it's review year after year. Let's set in fixed review periods in order to get the WCB off the backs of injured workers, in order to lessen the administrative burden."

The reality is that fixed review periods drive re-employment and drive rehabilitation. There's a very positive aspect to the determination of FEL benefits that we referred to as D-1 and then the review at R-1. If you're going to propose to take away those review periods and put an open-ended system in place, you better take a look at, how much re-employment are we going to lose and how much are we going to drive up the cost of benefits?

What you are proposing is dangerous, is going to throw the board into further turmoil, is going to throw all of your stakeholders into further turmoil to get an understanding of, what does this new law require us to do? How do we adjudicate it?

My point here is you've got some goals. I don't necessarily agree with those goals in terms of cost containment and assessment reduction. But even if you have those goals, this is a very dangerous and a very stupid way to go about doing it because it creates even more turmoil within the system than already exists and it puts us further in a hole in making the WCB almost impossible to understand for anyone who comes into contact with it.

**Mr Gary Stein:** My name is Gary Stein. I'm a lawyer at South Ottawa Legal Clinic. I'm here today presenting on behalf of the 14 community legal clinics serving eastern Ontario, everywhere from Orillia to Renfrew county, from Durham to Hawkesbury, including Cobourg, Peterborough, Perth, Ottawa, Kingston, Belleville, Cornwall and others.

All the lawyers at all the clinics represent injured workers as well as provide other types of legal advice. I had hoped to bring some of my clients with me to these hearings but, as you all know, this committee decided not to sit in Ottawa and has not provided an explanation for that.

I have provided this committee with a written presentation on behalf of these 14 legal clinics. What I want to touch upon here are the most dramatic and drastic changes as far as we're concerned, and I'll try to be brief. In short, our position is that the legislation offers no improvements for injured workers to the system which currently exists. What it does is take existing rights away.

Let me summarize some of the key points in the written submission.

First of all, with respect to the overall claims process, as you've already heard here today, it will complicate matters; it will not simplify matters. One simple point,



requiring workers, in addition to employers, to actually file a claim will certainly prevent some workers, perhaps many, from filing. This government has already heard from the Ontario Medical Association. I want to just quote something they told this government about a "disturbing and increasing trend" — those are their words — shown by their survey of doctors that 51% of doctors who had recently had a request by a patient who had presented, and this is a quote from their survey, "what clearly appears to be a work-related injury yet requests the physician not to report to the board, apparently at the behest of the employer." That's the doctors telling this government that, the way it works now, people are nervous and some will not report. What you are advocating will simply increase that.

Secondly, let me turn to the rehabilitation measures. Currently the statistics regarding return to work are not great, but this system you are proposing will not improve those numbers. For example, subsection 40(2) makes employers responsible for determining a worker's functional abilities. Something the WCB is now charged to do is being turned over for the employer to determine what the functional abilities of a worker are after the injury and how they can place them back into the workforce as quickly as possible.

Without going into all the details of the rest of those provisions, I just want to state that there's a very fine balance between getting an injured person back to work and forcing an injured person to return to work before the injury has properly healed. Our position is the legislation emphasizes one thing, getting a person back to work right away, and basically providing that injured person with as few supports as possible that would return them to work.

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I want to turn to the inflation protection section because I'm extremely concerned about this and I haven't heard much about it today. The inflation protection that is being removed, in the government's own estimates, from your cabinet's arguments, will take \$9.3 billion out of the pockets of injured workers over the next 17 years. That includes injured workers who are currently receiving pensions and injured workers who are currently receiving future economic loss awards.

The only workers who are protected from the effects of this reduction of inflation protection are those receiving 100% awards for their income loss. I've obtained from the WCB itself those statistics and they have advised me that there are currently 99.7% of all workers who are not in that category. As of 1995, there were a total of 529 injured workers out of 169,000 injured workers who are in that category. So essentially 99.7% of injured workers currently receiving pensions and FEL awards and all future workers will have money drawn out of their pockets by the inflation protection measures. That is one significant major cost that this government is imposing upon injured workers.

Why? You've heard the numbers about surpluses and profits and my friend Mr Dee has demonstrated how the WCB's own numbers underestimate the actual surplus.

Let's just, for the record, note the actual surpluses. In 1994 — this is from the WCB's own documents — there was \$130 million more taken in than paid out; in 1995, \$510 million; in 1996, \$432 million; the first three months of 1997, \$84 million. So when we ask, is this board losing money?, the answer is no from the WCB's own financial documents.

Therefore, what is the explanation for a government so focused on cost to now say, "We need to take more money out of the system"? There has not been an explanation. I think all the people of Ontario are entitled to an explanation from this government.

I'll touch upon two more points. Chronic pain: The current proposal will have the effect of eliminating all payments for chronic pain. The sections says that chronic pain benefits will be paid out as prescribed. The draft policy is already in our hands and essentially what it says is, after the usual healing time for an injury, which is when chronic pain actually begins in medical terms, there will be no payment for chronic pain except if a worker is in a pain management program. After the program, no matter what the effect, there will be no payment whatsoever, and that's right out of your own documents.

Subsection 118(2) of the draft legislation states that WCAT, the Workers' Compensation Appeals Tribunal, must apply the Workers' Compensation Board's own interpretation in the workers' compensation policies, that interpretation of what the law says, no matter what that policy says. In our submission that is an attack on the freedom of the independent tribunal to make its own decisions. To me, that is incomprehensible. We have an independent, neutral, expert panel akin to a court in workers' compensation matters, with members appointed by your government, drawn from both business and labour. If they find that the Workers' Compensation Board policies are not a correct interpretation of the law, why would this government now be passing a law stating that the Workers' Compensation Appeals Tribunal must accept that interpretation of legislation? The government has provided no explanation to Ontarians for that which we say is a drastic interference in the decision-making of an independent tribunal. The bottom line for us is that the legislation stands for one result: It transfers money from the pockets of injured workers to employers and provides legal advantages to employers at the expense of injured workers. I have provided a lengthy list in our written submission.

If this committee is reasonably seeking advice on amendments from injured workers and representatives, the only advice that I think can reasonably be given after having reviewed it is that the piece of legislation is so one-sided, it requires a complete rethinking. The only amendment that I can —

*Interruption.*

**Mr Stein:** If I can just for 30 seconds complete my comments, the only amendment I can make in good conscience is that you revoke all proposals which reduce benefits and inflation protection, since the alleged financial crisis on which this is founded simply does not exist.

**The Acting Chair:** Thank you very much for your presentation. I am sorry, but there is no time for questions.

Would those representing the Federally Regulated Transportation and Communications Employers —

**Mr Gerretsen:** On a point of order, Mr Chair: I would challenge the government members to study this financial proposal and to actually come back with a report —

**The Acting Chair:** I'm sorry. That's not a point of order.

**Mr Gerretsen:** — on whether Mr Dee's allegations are correct, because I think you'll find out that he is correct.

**The Acting Chair:** I'm sorry.

**Mr O'Toole:** I would ask in response, Mr Chair —

**The Acting Chair:** I'm sorry, but we're cutting into the time.

**Mr O'Toole:** The Provincial Auditor of this province has said in his financial analysis of Ontario that this is a real liability, and a liability that the people of Ontario must bear.

*Interjections.*

**The Acting Chair:** Order, please. Would you please respect the next delegation.

**Mr Christopherson:** On a point of order, Mr Chair: I'd like to request that you direct the legislative researcher to take that presentation we had and compare it to whatever other documentation exists and report back on their findings.

**The Acting Chair:** I'm sorry, David. It's not a point of order, as you know, and any member can request that research.

**Mr Gerretsen:** I'll second the motion.

**Mr Christopherson:** If I may, Chair, that's the way we've been doing it in committee. If you want it done another way, I don't care.

**The Acting Chair:** No, that's fine.

**Mr Christopherson:** I just want to make sure that the study is done, because I think this has been an important presentation, and whatever means would make you happy, please use it to make sure the work gets done.

**The Acting Chair:** Thank you very much. We will do that.

#### FEDERALLY REGULATED TRANSPORTATION AND COMMUNICATIONS EMPLOYERS

**The Acting Chair:** Would you please identify yourselves for the Hansard record.

**Mr Curtis McDonnell:** Mr Chair, members of the committee, my name is Curtis McDonnell. If I may introduce the people with me, they are Mr Ted Robbins, M<sup>me</sup> Madeleine Meilleur, and Mr Charlie Sheehan. We're here on behalf of FETCO. We want to thank you for this opportunity to address the matter of workers' compensation reform in Ontario. FETCO supports the government's efforts to improve and modernize workers' compensation

in the province so that it would provide a fair and equitable system which is financially viable.

A brief note about FETCO: It's an organization of federally regulated employers in the transportation and communications organizations and industries. Its members include such employers as Air Canada, Canadian Airlines International, Canada Post Corp, Canadian Pacific Railway, Canadian National Railway and Bell Canada, to name a few. In fact, there are 24 employers in the organization, representing approximately 420,000 workers across the country.

We have submitted a brief to this committee which is being distributed. We won't read the brief, but we'll try to speak to some of the items in the brief, and hopefully they'll be of some benefit to the committee in its deliberations.

With respect to the definition of "accident," FETCO urges the government to retain the concept of causality; that is, that there is a connection between the workplace and the injury for which compensation is to be paid. That has historically been the basis upon which it has been done, and we urge that it be continued.

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By contrast, what we see is a trend towards temporality; that is, where something occurs during the work time that is treated as compensable rather than necessarily being connected to the workplace. In this regard we would urge the committee to recommend to the government that diseases of ordinary life like flu and colds should not be compensable. Furthermore, we support the proposed legislation which specifically eliminates stress as compensable other than as provided in the bill. Likewise, FETCO supports the legislation concerning chronic pain in section 13.

With respect to functional abilities evaluations, medical information and medical examinations, FETCO urges the government to make it clear in the legislation that employers are entitled to relevant medical information, and in particular an independent medical examination by a health care practitioner of the employer's choice, as of right. This provision already exists in Quebec and Nova Scotia. Our experience in Quebec is that the right to an independent medical examination is a positive factor for both the employers and the workers, especially with respect to return to work and return-to-work programs.

With respect to the duty imposed on the employer to accommodate workers, it is FETCO's submission that the test should be one of reasonable accommodation rather than undue hardship as it presently has been determined to apply to the legislation.

With respect to the obligation on the worker to cooperate as set out in subsection 43(5), FETCO further submits that this section should be amended to include as an item the failure or refusal of a worker to attend any medical examination arranged for by the employer. A provision to this effect is in the Quebec legislation at this time.

With respect to subsection 46(2), it appears this section as currently drafted would provide for a minimum payment for any degree of permanent impairment at the sum of \$28,545.58. FETCO submits that this particular section



is not intended to ensure that this is the minimum for any sort of impairment, and accordingly recommends that it be reviewed for the wording and the wording changed to properly reflect what's intended about a minimum benefit for permanent impairment.

FETCO members are almost entirely schedule 2 or deposit employers. As such there is a provision in the draft legislation which empowers the board to set up a special fund for purposes that it determines are required. FETCO members respectfully urge the government to include in the legislation the requirement that the board consult with the deposit employers before setting up the fund and, further, if they've set up the fund, that they consult with the deposit employers about the use of the fund if they do choose to use it.

Finally, FETCO urges the government to maintain the present provisions in the bill dealing with the respective roles of the board and the external appeals tribunal. It is FETCO's view that it is the board which should have the statutory authority and responsibility to determine policy. It should be the role of the external tribunal to review cases that come to it on the facts that were before the board and to ensure that the policy of the board has been applied to the facts of that case. It should not be the role of the independent tribunal to make or determine policy through the vehicle of individual cases that come before it.

For instance, the bill as presently drafted provides for cabinet to issue policy directions to the board. If the tribunal held the authority to review policy and make policy decisions, it is entirely conceivable that a direction from the minister to the board on policy could be reviewed and changed by the external appeals tribunal. In our submission, that isn't what the legislation is intended to do, nor should it be what the legislation intends in terms of the authority and powers of the appeals tribunal. In view of the responsibilities of the board as set out in section 155, it is appropriate that the authority to make policy reside with the board.

We wish to thank you for the opportunity to make these submissions to you today. We know you've been hearing quite a few submissions in a limited time schedule and we thank you. If you have any questions, we hope to be able to assist you with them.

**The Chair:** We have just under four minutes per caucus and we'll begin with the Liberal caucus.

**Mr Gerretsen:** I'd like to get back to this question of mental stress. It really bothers me. We know that the definition as contained in the act and the circumstances under which a person can get benefits as a result of mental stress are extremely limited. You pretty well have to be fired or the conditions of work have to change or what have you.

Could you give me your reason as to why your association would be in favour of this act? Do you not believe that a person could be under so much mental stress that it can affect their ability to work at all? What do we do with situations like that?

**Mr McDonnell:** Yes, sir, people can be under so much stress that it affects their ability to work. People also have

other conditions that affect their ability to work as well. As we mentioned in our brief, from our perspective we think there should be a causal connection between the benefits, the claim, and the workplace. It's entirely possible that somebody can be extremely stressed and be unable to work as a result of that stress but for it to have no connection whatsoever with the workplace. As it's presently configured and historically developed, workers' compensation compensates people for injuries that are caused by the workplace.

**Mr Gerretsen:** But let's take this situation: We have a worker whose working conditions are totally changed, and medically the doctors and everyone attest to the fact that this person, as a result of these changing conditions, is now under mental stress. The way this is worded in the proposed act, that person would not be able to collect under the new act. Do you think that is right, that it's fair to the worker?

**Mr McDonnell:** I think that's a very, very difficult case. It's one of those situations where the very difficult cases shouldn't be the ones that determine the law. Each case has to be looked at on its own merits. I would say that what you're saying, the changing circumstances, are not simply a workplace-related injury or condition. We are literally living in a time when circumstances are changing dramatically for everybody throughout our society.

**Mr Gerretsen:** Sir, you just said it, that each particular case ought to be looked at in its own circumstances. If it can be medically proven that as a result of these changes and as a result of the working condition changes, a person is affected by them to the point where they cannot perform their functions in their work any more, they ought to be compensated. That's the fair thing to do, in my opinion.

**Mr McDonnell:** Well, if it's equivalent to an external trauma, then that's what the act says.

**1200**

**Mr Christopherson:** Thank you for your presentation and taking the time to come. I would like to also address the two issues that you want to remove from the compensable claim, which are chronic pain and stress. I want to say to you, and I mean this with a great deal of respect, that when we look at the history of what injured workers have had to go through in terms of the decades of fights to prove that asbestosis, silicosis, cancers and repetitive strain injury were caused by the workplace, it's a shame, when we've got the body of evidence that says this is work-related and it deserves to be compensated, that we're going to have to let the bodies pile up again and let lives be destroyed before we finally get the compensation these people deserve.

I don't know if you were here earlier. We talked about stress and I read some of the quotes from Dr Kates and from the psychological association of Ontario and others who were clearly saying that differentiating between stress that's related to the everyday lives that we live versus something that's been caused at work can be done. It can medically, scientifically, and with credibility be done.

In terms of chronic pain — I haven't had a chance to raise this and I want to — we heard from Dr Teasell, associate professor of medicine, acting chairman of the department of physical medicine and rehabilitation, a specialist in the area of chronic pain. Obviously I can't read the whole thing, but I want to read a couple of things to you.

He opens by saying: "There is a current and disconcerting trend towards dealing with chronic pain and its subsequent disability by denying its reality. The reason for this has been primarily cost containment and cost reduction."

He ends his presentation by saying:

"We seem to have crossed a threshold where it is increasingly acceptable to demonstrate a lack of empathy or compassion for anybody who is injured, in particular those who have chronic pain. Governments not only fail to display compassion for injured workers, but displaying such compassion is seen as weakness for not staying the course of significantly reducing direct costs. As health care professionals and researchers, we have an obligation to point out to our politicians and society in general that there is a significant human cost to the proposed policy changes."

"Shortchanging people when they are most vulnerable is going to markedly increase suffering, while at the same time swelling the welfare rolls and transferring the problem to other jurisdictions. Knowing what we now know about chronic pain, such an approach as they refer to clearly strains the ethical responsibilities we have for those individuals who are limited by chronic pain in our society."

I ask you, why do we have to let the bodies pile up and the lives be destroyed before you agree to come on side and recognize this deserves to be compensated for?

**Mr McDonnell:** Oh, I'm sorry. Was that a question?

*Interjection.*

**The Chair:** We'll move then to Mr Hastings.

**Mr Bisson:** Hang on. I have a question, and I need to put this because it's directly in your brief and you didn't get into it. I want to ask you, if you were ill today and I was to tell you that you have to go to the doctor I tell you you need to go to, do you think it would be fair for me to impose that on you? You would have to go to a medical doctor I tell you you have to go to and you have no choice. Do you think that's fair?

**Mr McDonnell:** It depends on what the circumstances are that you're talking about.

**Mr Bisson:** Do you think it's fair? You're ill. There's something wrong with you, and then I come up to you as a government official and I say: "You can't deal with the doctor of your choice. I'm telling you where you have to go to get medical treatment and who has to treat you, and if you refuse, I'm not going to pay your medical costs." Do you think that's fair?

**Mr McDonnell:** When you add in the part about paying the medical costs, there's an element of responsibility on the government's part, or whoever the person is paying for the cost.

**Mr Bisson:** Would you accept that? I'm going to come and dictate to you who's going to treat you. Do you think that's fair? Do you think I should do that as a government? Because that's what you're suggesting in your submission under subsection 43(5). It says, "This section should be amended to include that the failure or refusal by a worker to attend any medical examination which the employer has arranged" would be subject to the person losing their benefits.

I would say that is unfair, that nobody in the world has the right to tell the person how they should be treated. It is their body, it is their person, and nobody has the right to come and suggest that as an employer you're going to have somebody disqualified on the basis that you want to send him to Dr Quack or whatever doctor you want to send them to in order to look at their benefits.

**Mr McDonnell:** What we are advocating, what we have found in other provinces, is that in the circumstances this is not a first treatment; this is not a treatment medical examination. This is an employer having the right to have an independent medical examination that the employer wants to have.

**Mr Bisson:** But I don't want to be treated by Dr Quack.

**The Chair:** Mr Bisson, allow our guest to answer the question, please.

**Mr McDonnell:** It's not treatment. We're not seeking to treat the worker. We're seeking to have a medical evaluation of the worker for the employer.

**Mr Bisson:** Why?

**Mr McDonnell:** It's not treatment. We're not asking to treat them.

**Mr Bisson:** If any employer says, "I want to send you to Dr Quack," and I say as a worker, "I'm not going to Dr Quack," I would end up —

**The Chair:** Excuse me. I must interrupt. We're moving to Mr Hastings.

*Interjection.*

**The Chair:** Mr Bisson, please.

**Mr Hastings:** Madam Chair, before I ask my questions of these folks, do we get an extra 90 seconds? That is what has been taken away, in terms of fairness, which the previous speaker always believes in. Can we practise that? Do we get an extra 90 seconds? I need a clarification from you.

*Interjections.*

**The Chair:** I'm being as fair as I possibly can. Sometimes flexibility is required.

**Mr Hastings:** I really need to know whether we're going to get the extra —

*Interjections.*

**The Chair:** You'll have until 12:09.

**Mr Hastings:** Thank you. Mr McDonnell, my first question relates to a concern I have regarding your request that the government consider an exemption for those folks under the Canada Labour Code and that it would be similar to small employers in subsection (2).

I'd like to know, first off, what other provinces have provided federally regulated industries with such an ex-



emption, and if you were to be granted an exemption, would you be prepared to put in place some kind of specific return-to-work plan for those folks who are subjected, influenced — and we have to all operate under whatever the act is at the moment — rather than a straight exemption? I'm a little concerned that the employees in those circumstances would not be dealt with on a fair basis simply because you had the exemption.

**Mr McDonnell:** For return to work?

**Mr Hastings:** Yes, return-to-work provisions.

**Mr McDonnell:** The Canada Labour Code in subsection 239(1) specifically imposes an obligation on employers to return workers to work. One of the problems that federally regulated employers find themselves in is that there are two separate obligations: one under the Canada Labour Code which is similar to the Ontario legislation but is different. From our perspective, it would make it clearer that the governing law would be the Canada Labour Code, which is what federally regulated employers are covered by. But there is in that statute, in section 239, a specific obligation to return workers to work.

**Mr Hastings:** Does that involve a specific return-to-work plan that the employer has to work out under the Canada Labour Code?

**Mr McDonnell:** No. As far as I'm aware, there aren't regulations in place that deal with that issue at this time.

**Mr Hastings:** The second item I would like to focus on is the perpetual denial or, as we talk about — perhaps it's too technical, and it is in a way if you want to use accounting terms — unfunded liability. There is a contention being made, particularly by the last presenters, that in point of fact everything is pretty financially balanced. If you sort of readjust your accounting principles —

**Mr Bisson:** That's not what they said. What a misrepresentation.

**The Chair:** Mr Bisson.

**Mr Bisson:** Come on.

**The Chair:** I'm sorry, Mr Hastings. Please go ahead.

**Mr Hastings:** Thank you — that in point of fact there is some kind of a financial problem. However you term it, and whatever accounting principles you use, in point of fact right now, if you had to pay out everything to injured employees across this province for all kinds of compensation and pensions and other —

**Mr Bisson:** If I called back all your loans —

**The Chair:** Mr Bisson, would you please give our guests and other colleagues the courtesy due to each one of them.

**Mr Bisson:** It's very tough, and I apologize.

**The Chair:** Thank you.

**Mr Hastings:** No, you don't really mean it at all.

I would like to know from you whether you can put in human terms what it means if we do not deal with the financial situation — crisis, problem, whatever you want to call it — in terms of future rehabilitated, future injured workers, if boards in this country and in Ontario were trying to deal with the financial challenges when you do not have the books balanced, however you want to call that —

**Mr McDonnell:** I regret to say I can't give you a figure about how it will impact in the future. I know there are a vast array of actuarial reports that have worked on the issue of future liabilities and future costs and the impact on the Ontario situation and how large the future unfunded liability is in Ontario versus some other by itself. Other provinces also have unfunded liability issues which are determined by actuaries, depending on how the revenues of the province are.

In the last statistics I saw, Nova Scotia had a very difficult unfunded liability situation. Although it wasn't, in absolute dollars, as large in Ontario, it was worse than Ontario's, but it was less than \$1 billion in total. New Brunswick is actually moving towards full funding. They anticipate being fully funded within a couple of years. Some of the board administration feel that in part that was achieved by going to 80% of net for the first 39 weeks and then 85% of net, and a three-day waiting period. It didn't cause or accomplish but it helped to achieve some of these changes in their financial position.

**Mr Hastings:** Let me put it this way —

**The Chair:** Mr Hastings, I am sorry, even with the 90 seconds —

**Mr Bisson:** Why don't you ask for unanimous consent?

**The Chair:** All right, is there unanimous consent?

**Mr Bisson:** No.

**Mr Hastings:** You ought to be ashamed of yourself, Monsieur Bisson.

**Mr Bisson:** Have some of your own medicine back; your government —

**The Chair:** We are going to move on. Thank you very much; we certainly appreciate your contribution this morning.

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## ONTARIO RESTAURANT ASSOCIATION

**The Chair:** We'll ask our final presenter of the morning, a representative from the Ontario Restaurant Association, please, Mr Oliver. Good afternoon and welcome; appreciate you coming. You know the rules, I'm sure.

**Mr Paul Oliver:** Yes. Good afternoon. I'm Paul Oliver, president of the Ontario Restaurant Association. On behalf of the Ontario restaurant and foodservice industry, I'm pleased to be here to provide our views on Bill 99.

As an active member of the Employers' Council on Workers' Compensation, the ECWC, the Ontario Restaurant Association supports the views and recommendations put forward in the ECWC submission. Therefore today I will only make a few brief comments and highlight a number of areas of specific relevance to the thousands of small workplaces which dominate Ontario's hospitality industry.

Overall, the ORA strongly supports Bill 99. However, we believe there are a number of important amendments which must be introduced before Bill 99 is enacted. Without these changes, the implementation of Bill 99 will be

difficult and small businesses will face new and additional red tape requirements.

From our perspective, Bill 99 is a continuation of the refinements and concepts introduced by all three political parties over the last 13 or 14 years. Bill 99 is simply an evolution of this process. The ORA believes that once all the rhetoric is peeled away, this bill should be seen as a legislative initiative which will provide workers and employers in Ontario with a more balanced, fairer and, most important, sustainable compensation system.

To ensure that Ontario remains a competitive economic region able to create jobs, changes to the workers' comp system are required. Prior to the last provincial election, both the Liberal and Progressive Conservative parties made WCB reform an election issue, and rightly so, recognizing the problems facing the system. The system in many areas has simply spun out of control. Even while accident rates were rapidly declining, employer assessment rates were steadily increasing and the unfunded liability has continued to grow.

Throughout this period, the foodservice industry made significant progress towards reducing the number of accidents within our sector, but we were rewarded with further increases in WCB assessment rates. Even today, Ontario's foodservice rates are well above the Canadian average. Today, Ontario's WCB rate for restaurants of \$2.72 per \$100 is surpassed only by Quebec and Newfoundland at \$2.76. Our rates, however, are dramatically higher than the 91 cents in PEI, \$1.09 in BC, \$1.07 in Alberta and all other provinces and territories. This is a situation which must be corrected.

High WCB rates are, without a doubt, a job killer. Even within the restaurant sector, which is traditionally seen as a domestic economic sector where jobs are fixed to one location, WCB rates can and do kill jobs. New packaging technologies, advances in food preparation, the telecommunications revolution etc all mean jobs that previously had to be located in the restaurant can now be located anywhere. They do not have to be in the restaurant, and they do not have to be in Ontario. The cost of operating in Ontario, which WCB rates play a major role, is a direct determinant as to where those jobs are located, whether it's here in Ontario or elsewhere in North America. Bill 99 will begin the process of reforming the workers' comp system so that the taxation levels faced by employers and the wage replacement levels for workers are more equitable and balanced.

Bill 99 does not radically, in our view, alter the workers' compensation system in Ontario. What Bill 99 does is create new mechanisms to encourage and, yes, if necessary, force cooperation and communication between employers and workers. As well, Bill 99 places more individual accountability on employers and forces them to improve their performance. By shifting greater emphasis on accident prevention and rehabilitation, individual employers who don't get the new message will see a rise in their assessment rates, or increased penalties for those who do not meet the new standard.

The ORA strongly supports the new emphasis on prevention and cooperation contained in Bill 99. We are, however, concerned that Bill 99 has some serious pitfalls which need to be addressed in order to ensure the integrity, fairness and proper functioning of the system are enshrined in the legislation. The ORA is particularly concerned about the new re-employment obligations placed on small employers, including employers with under 20 employees, which were previously excluded from this regulatory requirement.

The section in question is 40(1)(b). This section of the legislation requires all employers "to identify and arrange suitable employment." This requirement is different than the obligation set out in 41(5), the re-employment section, which compels an employer to "offer the worker the first opportunity to accept suitable employment." Under this new section, an employer is compelled to search out suitable employment that may not even be available in the workplace.

Presently, many employers, for their own reasons, may create temporary modified or suitable employment for workers to assist with their prompt return to employment. This is, however, above and beyond the legislative requirement set out in 41(5). The new provision in 40(1)(b) will now require all employers to facilitate a search. Failure to do so will result in board-imposed penalties under section 84 of this legislation.

In requiring an employer to attempt such a search, and providing for financial penalties, it is obviously expected that the employer earnestly and diligently facilitate a real and meaningful attempt. Most significant is the fact that this new requirement to identify and arrange suitable employment under Bill 99 will be applied to all employers, regardless of size. Historically, small businesses employing fewer than 20 workers have been exempt from the re-employment obligations because such firms lack the ability to hold jobs open, or to create jobs where none has existed. Small employers simply can't function in this manner.

Under these new provisions, even a firm with one or two employees will be required to undertake a search for, and arrange for, suitable employment. Failure to do so, the same as with larger places, could result in a penalty from the board. From our perspective, this new re-employment obligation is an unreasonable and unworkable burden being placed on small businesses, and must be amended. If this section is not amended, small business operators will face new and substantial red tape in Ontario.

Other areas of Bill 99 requiring amendments include the area of labour market re-entry plans. The labour market re-entry plan process will work for larger employers; however, we are concerned that the time spent on claim may actually increase for medium- and small-size employers unless the need for board resources is identified at an earlier process. More clarity, from our perspective, is required in Bill 99 on this matter.

The ORA appreciates the simplification of the NEL process, but we recommend extending the prescribed time



for reassessment from 12 months to 36 months in order to give a fairer and more accurate reassessment.

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Employer assessment rates: Subsections 80(4), (5) and (6) provide for a very broad discretion to the board in setting company-specific assessment rates, but disturbingly, individual disputes are not allowed to proceed to a tribunal or to a review process. From our perspective, this is unjust and must be changed so that an appeal process is permitted.

Special reserve funds: The second injury and enhancement fund must be codified into law. The second injury and enhancement fund is an important part of the functioning of the WCB system and from our perspective should be included in the legislation and not left to the board's discretion.

The ORA would like to reiterate our support for Bill 99, provided that the legislative changes noted above are implemented. We would also like to re-emphasize our commitment to work with the WCB to help facilitate the implementation of both the spirit and intent of this legislation within our industry. Thank you.

**The Chair:** We have three minutes remaining per caucus and we'll begin with the third party.

**Mr Bisson:** Two questions: First, I notice in your brief, in the outline, not word for word, but you feel that this particular act is a more balanced and fairer system of compensation. I'm intrigued by your definition of "fair." I just want to test that out on you.

You have a system under the new regime that is going to take away privacy rights of individuals by releasing information from doctors about individual patients to the board or to the employer. There's a whole bunch of other provisions there that give the employer access to medical information that has nothing to do with the injury. You have a system that's going to reduce the benefits paid to injured workers that at the same time gives a \$6-billion gift to employers. You have a system that is going to restrict what is compensable for an injured worker, such as stress, industrial diseases and other types of injuries, and you're going to restrict the rights the individual worker has to an appeal. Is that fair?

**Mr Oliver:** Just to comment on a couple of those points, I think allowing employers access to functional ability information is a very fair process.

**Mr Bisson:** What I'm saying is they have access to much more than that. If I have AIDS or —

**Mr Oliver:** From my perspective, judging by what I believe is in the functional abilities form that will be filled out by the doctor and returned to the employer, it's information on what jobs or what activities that employee can do. If the employer is going to be obliged to bring that person back and create work for the worker, they need to know that information, and I think that's fair. I think part of the problem with the system now is that there's an obligation for employers to do certain things but —

**Mr Bisson:** I hear what you're saying, but what I'm asking is, where you have a system that is going to demand a whole bunch of things from injured workers that

were not accepted — cut benefits, reduce the right to appeal, all that kind of stuff — in the case of the board it says that a person receiving benefits, in other words an injured worker, "shall give the board such information as the board may require from time to time" — it doesn't stipulate what it is, it's absolutely anything: financial, medical, whatever — is that fair?

**Mr Oliver:** For the board, which is paying the compensation claim, I think it is. For what information goes to the employer —

**Mr Bisson:** Is it fair for the worker? It might be fair to the board but I'm saying for the worker.

**Mr Oliver:** At the end of the day, if you're asking the board to pay for the cost of a claim, I think an insurance company —

**Mr Bisson:** Okay, next question. I see where you're going.

**Mr Oliver:** Mr Bisson, I think probably the difference we have in our view is whether we see it as an insurance program replacing wages lost for injury or whether we see it as a social network.

**Mr Bisson:** And we have a different view or opinion.

**Mr Oliver:** I see it as an insurance program. There are other social network programs out there that provide for people who —

**Mr Bisson:** Okay, second question. I hear what you're saying. You're saying you think it's fair; I think it's not.

You're saying also in your brief that WCB rates are a hindrance to job creation and actually are a job killer. You're obviously going to be getting a gift of \$6 billion from the government when this legislation passes. I want to know from you, how many jobs are you going to be creating over the next year? Do you have any projections of how many jobs you're going to create as a result of the \$6-billion gift that employers are getting? Can you commit to that?

**Mr Oliver:** Before you talk about gifts, because personally I don't believe there's a gift there — if you or someone else want to write me a cheque, I'll be happy to take it away — the reality is that the rates in Ontario are substantially higher than elsewhere in Canada when we look at Alberta, which is \$1.07, or British Columbia, which has a very generous system — it has \$1.09 — versus \$2.72 here. Keep in mind we are competing for jobs with BC and Alberta and Saskatchewan and Manitoba.

**Mr Bisson:** But you're getting that. How many jobs are you going to create? That's the question.

**Mr Oliver:** We're not going to be looking at substantial rate reductions. We're not even going to come into the same ballpark. We're not playing the same game as Alberta or —

**Mr Bisson:** How many jobs? This legislation —

**Mr Oliver:** It will help keep jobs here and we think it will create jobs, but if you want me to put an exact number on it, I can't do that.

**Mr Maves:** Mr Oliver, thank you for your presentation. The NDP labour minister agreed with you in 1994. He said, "There's a growing feeling that the WCB is

becoming a drain on Ontario's economy, on our ability to attract investment and jobs and spark business confidence," and we agreed with him.

**Mr Bisson:** Read the rest of the speech.

**Mr Maves:** I could, and it does well.

One of the questions I have for you, Mr Oliver, is that you're right that in section 40 there's a new and more difficult obligation placed on employers, especially ones with 20 or fewer employees, where it says they have to attempt "to identify and arrange suitable employment." We think that's a vital part of the bill. We've heard from people from all sides of the table that safe and timely return to work is essential, not only for the financial health of the system, but for that employee. I don't personally think that is something we would want to change in the bill. I think it's one of the strongest parts of the bill.

**Mr Oliver:** The concern we have is requiring a formalized process. The concern we have is that most small employers are small, family-run businesses. They are in very regular contact with their employees when they are injured. In my industry, for example, we have an injury in the average workplace once every eight to nine years. What they do is, if a person is off, they will be in regular contact with them. It's the owner taking a very hands-on approach to bringing that person back to work.

Our concern is with the board coming up with a very bureaucratic process, "You have to complete these forms, you have to do this audit, you have to do this," and the employer saying, "No, I've talked to my employee and they're coming back next week." "But you haven't done this form, so therefore under section 84 you could have a fine imposed."

What we're suggesting is either cleaning the legislation up so there isn't this bureaucratic process there or allowing employers to do as they are doing in bringing back those employees. Remember, if they don't bring them back, they are facing penalties and surcharges on the experience rating. In the changes that are going on at the board now, experience rating will penalize small employers just as much as big employers when they don't bring people back, if they stay on long-term and the employers don't bring them back for modified work.

The concern we have is the bureaucratic process. The board has this tendency, rightly or wrongly, to make small requirements very cumbersome. Our concern is that because it's not prescribed in legislation, this requirement that is already being fulfilled by most employers out there is going to become a very bureaucratic process.

**Mr Gerretsen:** Two very quick comments and questions. You're saying the unfunded liability is growing. We had a presentation from Mr Dee this morning which indicates that, especially if you take into account the change in the excess of market value, of the carrying value, in the last two years the fund has gone to the good by about \$1 billion, and in terms of actual 1987 dollars the amount of unfunded liability is almost the same. I realize that the two of you are approaching it from different ends, but I would like you to study his figures as well and tell me if you agree with them.

**Mr Oliver:** Certainly, I can go back and say that in the last week the deficit at the board may have gone down or may have gone up. It depends on what time frame you pick. But I'm talking about what the trend has been over the last four, five, six, seven years. Actually, since the mid-1980s it's been continuing to grow, even though assessment rates for my industry have also been growing and at the same time accident rates have been going down.

**Mr Gerretsen:** So you're concerned about it?

**Mr Oliver:** I'm very concerned about it.

**Mr Gerretsen:** Well, if you're so concerned about it, why don't you tell the government, "Don't cut our premiums. Let's get this down to an acceptable level first"? Why doesn't your association do that?

**Mr Oliver:** I think that's what Bill 99 does: It sets in place a plan to manage that change. There's change going on everywhere. You don't just do one thing and ignore the other. This looks at controlling the cost of workers' comp so that we're competitive in Ontario, so that we're keeping jobs here, we're managing the deficit. Sure, we could manage the deficit overnight by putting a levy on everyone and driving every job out of Ontario, if that's what you'd like to do, and we could get to zero overnight.

**Mr Gerretsen:** Finally, clause 40(1)(b) really has me baffled. This act should be about fairness. What in goodness' name is wrong in a section that says, "The employer of an injured worker shall cooperate in the early and safe return...of the worker by attempting to identify and arrange suitable employment"? It's not that he shall give him suitable employment, but he will attempt to identify, to try to get this guy back into work and when possible restore the worker's pre-injury earnings. For most small employers I've known over the last 25 years, they try to do this kind of stuff. What is wrong with putting this kind of thing in legislation so that at least there is some obligation on the employer to try to find some other suitable employment?

**Mr Oliver:** I think I answered that when Mr Maves asked the same question. The concern we have is that the requirement is not prescribed. It just says, "You shall do this," and then it backs it up with fines that the board may impose.

**Mr Gerretsen:** It doesn't say, "You shall do this"; it says, "You will attempt to find suitable employment."

**Mr Oliver:** But if you're attaching fines or penalties to it — they've got to go through the process, but what is the process? That's the question. The process isn't prescribed. What we'd like to do is see the process prescribed so that you know what it is, so that you're not being required to go through a major bureaucratic process. For a small employer who has one employee, what does it mean for them to do that? Can you tell me today? No, you can't.

**Mr Gerretsen:** I can tell you what it means —

**The Chair:** Mr Gerretsen, please.

Mr Oliver, on behalf of the members of the committee, we thank you for coming this morning. It is appreciated.

Colleagues, that concludes our presenters for this morning. We will reconvene at 1:30 this afternoon.

*The committee recessed from 1231 to 1328.*



## KINGSTON CONSTRUCTION ASSOCIATION

**The Chair:** Our first presenter this afternoon is a representative from the Kingston Construction Association. Please make yourself comfortable at the table. Welcome. If you would, please introduce yourself for the Hansard record.

**Mr Tony Pascoal:** Good afternoon. My name is Tony Pascoal and I'm vice-president of the Kingston Construction Association. I'm here to present our paper.

The Kingston Construction Association would like to thank you for the opportunity to present some of our views and suggestions on behalf of our 264 construction contractor-supplier members. Our following presentation will focus on the uniqueness of our construction industry and the relationship between the employer and the employee.

The KCA is generally in support of the reforms proposed by Bill 99. However, our concern is that our industry may be blended in general conditions that are not suitable or applicable. If this happens, our assessment rates will likely continue to increase disproportionately and thus force construction costs to do the same.

Investors considering coming to Ontario, as well as those considering expanding or even staying in Ontario, consider construction and maintenance costs as a prime factor. Traditionally, the line of thought was that contractors and suppliers will just pass on higher compensation costs to the owners and investors. Owners and investors have the ultimate say in where they locate. We have to compete with neighbouring provinces and countries. For your consideration, the Kingston area is within a two-hour drive of Quebec and northern New York state.

The KCA will support a fair compensation system to all employees that protects their rights. However, we also need a compensation system that ensures the economic viability of our industry within Ontario and competes on the global market. We need to be assured that the reformed compensation system is fair to both employees and employers, but not subject to fraud and abuse, and in competitive comparison with other provinces and states.

The employer-employee relationship in the construction industry is very different from other sectors, such as manufacturing and commerce. Our workforce is often very short-term, seasonal and on a per job contract basis. Most of our firms employ an average of six employees and enter into project contracts averaging three months. This imposes limitations on what options our employers have with their employees. For example, the likelihood of return to work with the accident employer is much lower than in other sectors. Many of our member firms also have union agreements which severely control the hiring practices and conditions.

KCA members are concerned about the negative effects that illegitimate contractors and the underground economy place on the compensation system and force an alarming increase in compensation costs. For example, trades such as masonry and roofing are facing increases of 25% to 30% of assessable payroll annually. Yet legitimate con-

tractors in the same trades have introduced the safest health and safety policies in North America over the last 10 years. We seem not to be deriving any benefits from having among the lowest construction accident rates in North America. Something is wrong. Our members are demanding relief from higher assessment rates that are contributing to the negative growth of the construction industry, which will result in higher unemployment rates and less capital investment in Ontario.

The message from our construction industry is that we need a compensation program that respects the interests of the worker and the construction contractor-supplier employer equally. Quite unlike other industries and businesses, our employee-employer relationship is very complex: often seasonal, mobile, specialized to a specific trade or skill, often facing an aging or limited workforce, and unique conditions for each individual project undertaken.

On behalf of the Kingston Construction Association, thank you for your time and patience. I would be happy to discuss any questions you may have.

**The Chair:** Thank you very much. We have four minutes each per caucus and we begin with the government caucus.

**Mr W. Leo Jordan (Lanark-Renfrew):** Tony, thank you very much for your presentation. I would like to ask you to enlarge a bit here on this statement that you make that your "members are concerned about the negative effects that illegitimate contractors and the underground economy place on the compensation system." Just what are you referring to here?

**Mr Pascoal:** There are a few examples; maybe I can give a few examples that would highlight that sort of thing. One about illegitimate contractors is that a lot of them are taking on projects aside from the normal written contract, that sort of thing.

**Mr Jordan:** Excuse me: "Illegitimate," is that a contractor that does not belong to your association?

**Mr Pascoal:** No, sir, that doesn't reflect on those that are not members of our association. In fact, a lot of good contractors are not yet members. For instance, a lot of the home builders are not members of ours that have their own association. That's not the case.

What I'm getting at is those who don't follow, perhaps, written contracts and written invoices, and then there's the procedure with the lien act and the compensation clearance certificate procedure that's required and that sort of thing; in other words, those that just sort of bypass those kinds of checks on the system, and many of those that are doing projects literally for cash only and there's no record. Those projects are getting much larger than they used to be.

**Mr Jordan:** Your legitimate trades, if you will, have tried hard to introduce safety measures on the job and keep the employee in mind from a safety point of view. Are you saying these people are getting away with some hazardous conditions on the job?

**Mr Pascoal:** Yes, sir. In fact, many of us are concerned. Our association and other construction associa-

tions work closely with the Construction Safety Association of Ontario, which is affiliated with the workers' compensation system, and we have, for instance, regular monthly meetings often specific to each trade, so in a month there may be 10 or 12 different meetings. One may be masonry, another may be plumbing and that sort of thing.

As well, there are overall general meetings for the industry as a whole. We work with them through educational programs with our contractors and suppliers and keeping up with the legislation and what is appropriate to protect the interests of our employees.

**Mr Jordan:** Would the labour inspector not check these people on the job?

**Mr Pascoal:** No, not necessarily. In fact, one of our problems is that the labour inspectors usually, and it's no personal criticism of them, have office hours and they only work, say, Monday to Friday from 8:30 to 4:30. A lot of the illegitimate stuff is after hours on weekends and it's not reported. It would be very hard for these inspectors, with all due respect — we the legitimate ones give them notice of projects because that's the legal thing to do, and then they are aware of when the project begins, how long it is going to last, whom to contact, and they come out and visit us. These illegitimate activities, there's no record of them.

**Mr Patten:** Thank you for your presentation. It was short and sweet and to the point. You've identified, as many people in the construction industry have already done, the difficulties around the return to work and whose responsibility it is when someone does have an injury. But I understand there are negotiations, that if they haven't started already, will be taking place and that the government has acknowledged the uniqueness of that aspect for your industry and that there will be some discussions.

But it's my understanding that if the frequency of accidents has gone down, the assessment by the board, their experience rate, is over a multi-year period. If the trend, as you suggest, is correct and that it has gone down, there are only two other factors, as far as I'm aware, that would keep the rates high. One is that in the next cycle the rates would drop, all things being equal. Even though there's a frequency drop, there may be an increase in the severity, which is more costly. I think it's an economic formula, is it not, as it's applied? It's not just, "We're going to charge these folks more because we want to ding them." I think the board has to justify their statement of why the rates are that way. But I think it's over at least a three-year period, maybe even a five-year period.

1340

**Mr Pascoal:** If I can just elaborate on that, there is a problem. Although the CAD-7 is a good program, there are a lot of real flaws in the construction industry with it.

For instance, it's based almost equally on the cost versus the frequency of an accident. In other words, the way the formula is set up right now, half an accident is it; that's it, I'm over. There's no such thing as half an accident. There's either one or there isn't one. As soon as there's an accident, even if it's only hitting the finger with

a hammer, that worker claims one day or two days, it's over, and the CAD-7 is destroyed for that contractor.

Unfortunately, it's the kind of thing where, unlike manufacturing or commerce, we can't just shift the worker, due to safety concerns. We can't just say, "Okay, you can't hammer nails any more, so you can sit here or sweep the floor or do something like that." We have a real problem with the CAD-7 in that half an accident will put that contractor in jeopardy, and there's no such thing.

There should be a little bit more fairness in the overall cost of the accident and not so much the frequency in the construction industry, although we all strive for zero frequency.

**Mr Gerretsen:** I certainly agree with you that nobody would condone fraud or abuse, whether it's on the employee's part or on the employer's part, whether we're talking about workers' compensation or any other activity, for that matter.

Have you done any studies or have you been able to determine why, if legitimate contractors have improved their safety record etc, within your industry there have been such tremendously large increases in your premiums?

**Mr Pascoal:** We've looked at number of factors. One of them is that if someone decides to be a construction contractor tomorrow, they can basically fill out a form, contact the WCB people and get a number. They can go out and operate for a month, two months, have no safety record whatsoever, have a couple of claims and then shut the door. In other words, there's an overall pending group of accumulated claims from fly-by-night-type contractors. There's no way of policing or controlling that.

We'd like to see some kind of control where an individual is paying the same rate yet has no track record or has a previous bad record, even, and there's no penalty imposed on his rate. In other words, if I pay 10% per \$100 and a new person starts tomorrow, and that individual may be good or may be bad or may have had a previous bad record, he pays the same \$10. There's a real problem with that if the individual comes in, destroys the industry, has no safety requirements, has no concern for his employees, has two or three claims and leaves us with that kind of record behind him, yet we have to fund that. We'd really like to see some policing in that area.

**Mr Christopherson:** Thank you for your presentation. When you talked about illegitimate contractors, the underground economy and safety measures — you're one of the contractors. Are most of the contractors you use unionized employees?

**Mr Pascoal:** Our association is a mixed group. It's pretty close to half and half. Half the contractors are union and half are not.

**Mr Christopherson:** What about yourself, your own business?

**Mr Pascoal:** My own business is union. I run a masonry business that's unionized.

**Mr Christopherson:** Do you find that with the union you're under more pressure to deal with some of the safety issues because they're on top of you, as opposed to the other contractors who don't have that?



**Mr Pascoal:** Yes. We have a fairly good relationship with our unions, but I guess it's a built-in factor. Not to be unfair to our non-organized members, but there are checks and balances within the union workforce that even if the employer is not there, someone is automatically assigned, a shop steward, that sort of thing, and there's a little more training. However, some of our non-union contractors are moving that way. But generally speaking, there are more checks and balances with a unionized workforce.

**Mr Christopherson:** I appreciate your frankness and honesty. I'd be shocked and have some difficulty if you had said otherwise. Being someone who supports the labour movement, I think that makes a good case for workers who are worried about safety. One of the first things they can do is join a union and have the benefits of being represented by a trade union.

Also, I wanted to acknowledge to you that every group that has come forward either from the union side or from the employer side, in talking about your industry, has gone to great lengths to point out the uniqueness of the industry. I think it would be hard for any member to spend even a day on this committee and not come away understanding that. So I think that's of some use to you in terms of your industry.

My question to you is based on your comments on the last page. You say your message "is that we need a compensation program that respects the interests of the worker and the construction contractor...employer equally." I would submit to you that the interests of the employer have been duly respected by this government, particularly to the extent of \$6 billion that's going back to employers by way of a cut in the money they pay out. I think the injured workers have been treated most disrespectfully by this government in Bill 99 by virtue of the injuries and illnesses that are no longer compensable and certainly, most obviously, by a 5% cut in the amount of money they get if they're injured on the job through no fault of their own.

Can I ask you how you square that with your believing that it's an equal hit for both, or equal benefit as some have actually foolishly suggested?

**Mr Pascoal:** Our concern is that in the construction industry, because of the nature of the projects and the aging of the workforce and the specialized skills, we have a little problem. The concern is that for instance some of our workers are specialized in, say, bricklaying, for my example, and if something happens it can be difficult to get them into a rehabilitation program that can mobilize them, that if they're into the stage of recovery, we can recover and work with that individual. It's difficult. There aren't the — how would I say it? — opportunities for that sort of rehabilitation back to our specialized skills.

It's tied in more with the overall shortage of the apprenticeship programs and everything else. We have a real problem in our industry with what is available for training. If someone needs to go to St Lawrence College or whatever, there are a lot of options. But in the construction industry there are very few options for them to get there.

The other thing is that where we see the unfairness, and we're not against a legitimate claim at all — most employers support compensation if something happens. We're concerned about the length of recovery time. In other words, disability allowance can be two and a half times, three times higher in the construction industry versus other sectors. In other words, for them to be re-trained, or physiotherapy, that sort of thing, to get them back to the work site within a decent and acceptable amount of time, there aren't the avenues that there might be in the other sectors.

**The Acting Chair:** I'm sorry. The time has elapsed.

1350

## QUINTE LEARNING CENTRE SKILLS NETWORK

**The Acting Chair:** We'll have our next presenter please, the Quinte Learning Centre. I'd like to welcome you this afternoon and ask you to give your names for the Hansard record.

**Mr David Scrymgeour:** Dave Scrymgeour from the Quinte Learning Centre and Jan Rockett-Ulicki from the Skills Network.

Our organizations have been in the field of training and vocational rehabilitation for over two decades. We've seen a great deal of change, possibly nothing as significant as Bill 99. Change is often a difficult process, especially when it's being driven by hard economic reality, but I think everybody in this room shares one common concern and that's for the health and the safety of this and future generations of workers.

We work with hundreds of injured workers every day and it's impossible not to have great admiration for the courage and determination with which they strive to return to work. But in many cases the current system has failed them. It is often disjointed, unfocused and unmeasured and it doesn't get them back to work as quickly and effectively as it should.

Our organization has not benefited from Bill 99, but despite this, there are three areas that we are very familiar with that we think of it as going in the right direction for Ontario. The first area is that of prevention. We know that any form of education from basic literacy to skills training is sound business practice.

In my teens, and many of us did, I took a driver training course. I learned a life skill and a potentially dangerous activity that was of value to me and at the same time reduced my insurance premiums. It was value added that paid for itself. This is the type of concept I think we should be adopting in this area. We as a company would rather deliver a little bit of prevention to a lot of people than a lot of cure to the unfortunate few.

The second area is labour market re-entry. Our response to the challenge of Bill 99 has been to develop a powerful and seamless model to make workplace transition more manageable. It incorporates all facets of this process, from assessment and testing to training to job

search skills and work placement. I am sure that effective return to work is a common goal of all the stakeholders in this process, and we know from our experience that a coordinated, outcome-driven model is a massive improvement over the existing system.

The third area is that of shared responsibility. From employers to workers to specialty service providers, we must embrace accountability. I don't know how many times I have requested that we be inspected by the WCB, as we are by the Ministry of Education, that we be measured and held to standards along with the rest of our industry. We'd like to see this included in the new system. All the areas I've talked about would be revenue-neutral if not revenue-positive.

At this time I would like to introduce my colleague Jan Rockett-Ulicki of the Skills Network, who will speak in more detail about our labour re-entry model.

**Ms Jan Rockett-Ulicki:** I just wanted to speak to prevention and labour market re-entry delivery and how to improve on these. Over the past year, knowing that Bill 99 was coming into effect, we wanted to put together a seamless model for re-entry to the workforce, so we have worked in partnership with other learning centres, with vocational rehab, insurance companies, literacy networks and the corporate sector, along with HRDC, to come up with that seamless model.

Part of that model we have shaped is basically needs assessment, basic skills, English-as-a-second-language training, prevention and safety, job search, job placement and labour market trends. We've also come up with a train-the-trainer program which is delivered to the employment sectors and is based on facilitation around listening skills, problem-solving skills and team communication with the employees.

We also have a group of experts in the field of clear writing of safety procedures in manuals, as well as trained, qualified people in the areas of case management, and this is where we see our primary role. In past years it has always been after the fact, delivering services to the workers after the injury and trying to get them back into the workforce. Now we see in the future our role being preventing, and if not helping in the manner of prevention, working with employers and companies and the employees, then certainly in the way to get back into the labour re-entry workforce as quickly as possible but with the skills that are needed in order to do that.

**The Chair:** Thank you very much. You've left us plenty of time for questions, approximately four minutes per caucus, and we'll begin with the Liberal caucus.

**Mr Patten:** Thank you for your presentation. Are you a member of CARP?

**Ms Rockett-Ulicki:** Yes, I am.

**Mr Patten:** They made a presentation here and I think made similar points to you. With a lot of the things you do, that means you work in conjunction with some of the WCB case workers, I suppose.

**Ms Rockett-Ulicki:** Yes, we do.

**Mr Patten:** What is your assessment? What do you think is the ideal model? Should it be a mix? Should there

be no rehabilitation workers with the board? Should it all be private sector? What in your experience would be the best arrangement? Then I want to ask you about your seamless program.

**Ms Rockett-Ulicki:** I would think it should be a mix. I know that I've worked closely with the case workers over the last five years, and from my experience, most of the case workers generally do have a lot going for them. They really work with their clients. They seem to feel they want the best for the client, and I found most of the case managers to be very good with their clients.

I think going private would certainly help in the manners of education and training because those are the people who are experts in the fields and those are the people who know exactly what is needed. I think that's important to get the person back to work. I also would like to stress that I think the employers themselves have to be involved because it's basically working as a team and, as I've said before, our role has always come after the fact. Once workers have already been injured, then they're placed with us and we have to try to get them back into the workforce.

That's not always been a seamless model, because it's been very difficult. First of all, we don't know where they've come from, what employment sector. A lot of the times, sometimes people aren't too open with information so it's difficult to gauge exactly what to do. Sometimes the vocational rehab plan has not been very definite so you're sort of guessing and working around a lot of areas you're not too familiar with. I think it's best as sort of a joint venture with everyone concerned being involved.

**Mr Patten:** So I understand. The board has already started the process of laying off some vocational rehab workers, but then they're going to hire back several hundred and those would be nurses. According to the Registered Nurses' Association, they're somewhat mystified — maybe "mystified" is a strong word, but they're not totally confident as to what this will mean for them. They know they're comfortable with the medical side —

**Ms Rockett-Ulicki:** Exactly.

**Mr Patten:** But the other part of that job is of course going to be advice and counselling and referral and all sorts of things, probably many of those functions you do yourself. How do you read that? Is that going to be an improvement?

**Ms Rockett-Ulicki:** I think it's going to be an improvement certainly in the medical part of it. I have a nursing and pharmacy background and I know I spend a lot of time counselling some of the workers who are with us because that part of it has been missing with the case worker, because they're more focused on: "Okay, now, we have to get you back to work. We have to get you trained in order to do that." Sometimes I think pieces have been missing in the actual medical part of it. Of course, they are not trained, they don't have that kind of background, so that would be an important step, for nurses to be involved. But I still believe the case management is still more than just the medical part of it.

**Mr Patten:** I agree.



**Mr Scrymgeour:** Our organizations have been working very hard to become participants in this process because we believe, to be effective, it has to be goal-driven, it has to be accountable, it has to be cost-effective. Otherwise, it doesn't work for anybody. We're driving very hard to be able to participate and send it in that direction.

1400

**Mr Bisson:** You spoke to the issue of prevention as the best way to be able to deal with trying to contain the costs of the WCB from the employer's side and from the employee's side, trying to prevent the tragedy that happens to people when they do become injured. I don't think anybody argues, no matter where you are. The key is you have to try and find some way to lessen the amount of accidents.

The problem I have is that when you look at this legislation it really doesn't address adequately how to be able to prevent accidents. I'd maybe try to take it out of WCB and just take it to something a little bit different to illustrate my point. You prevent accidents by doing one of two things. You either have a financial disincentive to the employer; in other words, the more accidents you have, the higher rate premium you'll pay. So if you want to pay less premium you end up with a lower rate, and that's what the NEER system was supposing to be all about, something prior to this act, actually.

The other way is by way of education, educating workers and supervisors about how to conduct a safe workplace so that we can identify problems before they happen, so that we can hopefully address and prevent accidents from happening in the future. Those are things that again were done prior to this act under the Occupational Health and Safety Act, the rights workers have to refuse unsafe work, the health and safety agency, all of those things that were leading in that direction.

This legislation takes that away. It doesn't only take that away, but really doesn't even bring it a step forward; it's like we're going backwards. How can this legislation lead to prevention? I'm mystified? We're not doing a financial disincentive; we're giving employers a \$6-billion rebate and at the same time we're disbanding the health and safety agency and we're not doing anything really to address how to make safer workplaces.

**Ms Rockett-Ulicki:** I can only speak to the education and training part. That's what I know more about and —

**Mr Bisson:** But your colleague, maybe?

**Ms Rockett-Ulicki:** I'm not sure if David could answer that question or not, but I certainly feel that education, communication, training is the most important factor.

**Mr Bisson:** I don't disagree with you on that point. Do you feel this legislation is going to bring us closer to being able to prevent accidents in the future by reducing rates to employers and by not moving forward on the education side?

**Mr Scrymgeour:** I am not an expert on the details of this legislation, but we believe very strongly and promote very strongly, not even so much that there should be an economic disincentive, but there is an economic incentive to employers and workers to engage in education and

prevention. It is just good business practice. Everybody loses when somebody gets injured.

**Mr Bisson:** I think we agree the problem is that the act doesn't do that. Just a follow-up to that is we've done great strides in being able to prevent drunk driving. There's stuff this government has done that is very positive. There's stuff our government and the previous Liberal government did that was positive, and there were two keys to it: lots of public education so that we understand it's a bad thing, and at the other end a financial disincentive to those people who were the perpetrators of the crime. Finally, we've gone to licence suspension, which is in question now, but yet again it was a step in the right direction.

If I were to take the analogy of what this legislation does towards drunk driving, it would be like saying, "I'm going to lessen the fine for the drunk driver and I'm going to decrease the benefit to the person who got struck." I'm wondering how that would improve anything when it comes to the issues of drunk driving. That's basically what this stuff does.

**Mr Scrymgeour:** I guess just a comment of philosophy. It has certainly been our experience that the job gets done better and more reliably when there is a reliance not on a vague parental government, but a reliance on the factory floor and the employers and the workers to be accountable for what happens. I believe that's where the result will come from.

**Mr Bisson:** That's part of what happened under the older legislation, the right to refuse, the strengths of the Occupational Health and Safety Act and the health and safety agency, mandated health and safety committees, workers being involved in all of that, all of which has been taken away.

**Mr Hastings:** Mr Scrymgeour and Ms Rockett-Ulicki, what I'd like to know is, the number of years you've been in the training business and getting people back to work, I suspect, not just for supports to getting them there, is there any evidence of a success ratio model of actual job placements, regardless of whether the model has been developed by the private side of the vocational rehab industry or by the public side? Because throughout most of these hearings we've never really seen much evidence as to, aside from specific companies which either have a unionized work environment with a fairly well-worked-out, managed return-to-work program that's very specifically staged, probably negotiated if it's in a collective bargaining agreement, or really no such leverage in a non-unionized environment.

The second item I'd like you to deal with is how you see the role clarification for the WCB if you want it to — Mr Scrymgeour, you were mentioning that you could see the WCB acting in a sort of monitoring, check role, similar to the Ministry of Education and Training under the Private Vocational Schools Act. I get very uncomfortable with the idea that the WCB, aside from being a referee in disputes where under the proposed legislation, neither party could come to a successful outcome on an RTW

plan. How would the WCB be able to act in that role that you allude to under MET?

**Mr Scrymgeour:** To take your second question first, and Jan may want to address your first one, I would prefer a minimum critical regulation to taxation. I would prefer to see the government play the role of setting a standard and holding an industry accountable than delivering the service itself. I believe there is some minimum level of direction-setting that must be there and then after that it comes down to the employers, the employees and the providers to take responsibility to get the job done within the parameters that the government would outline.

**Ms Rockett-Ulicki:** To your first question, in the 15 years I've been involved in the training and working with WCB clients — I can get you the actual statistics — probably about 85% of the people we have worked with have gone on to further education and training and have gone on to work placement.

**Mr Maves:** Just quickly, you spoke of education and the first purpose of the act, as enunciated by the act, is "To promote health and safety in workplaces and to prevent and reduce the occurrence of workplace injuries and occupational diseases." To that end, the functions of the board are: "To promote public awareness of occupational health and safety"; "To educate employers, workers and other persons about occupational health and safety"; "To foster a commitment to occupational health and safety among employers, workers and others." I'm assuming that's what you mean by "is the proper way to go" with regard to prevention.

**Ms Rockett-Ulicki:** Definitely, I think promotion, awareness, education are the ways to go.

**The Chair:** With that, the members of the committee thank you for taking the time to bring your ideas and experience before us today.

**Ms Rockett-Ulicki:** We thank you for your time.

1410

#### ONTARIO MEDICAL ASSOCIATION, ANAESTHETIC AND CHRONIC PAIN SECTIONS

**The Chair:** Our next presenters are representatives from the anaesthetic and chronic pain sections, the Ontario Medical Association, please. Good afternoon and welcome. Please introduce yourself for the Hansard record. You have 20 minutes for presentation time.

**Dr Ellen Thompson:** My name is Dr Ellen Thompson. I am a consultant anaesthetist with training and expertise in the area of chronic pain management.

**Mr Bisson:** You're not going to put us to sleep, are you?

**Dr Thompson:** I always find it prudent to warn any audience that since my main occupation is in anaesthesia, anyone who is found drifting off to sleep will be asked to provide their OHIP card, or maybe this afternoon I'll just bill WCB.

For the past 20 years or so I have also been in the business of treating chronic pain patients and I have long been deeply concerned with the way the Ontario Workers' Compensation Board does business. I'm a member of the Canadian Pain Society, of the American Pain Society, of the International Association for the Study of Pain. I'm recently on the executive of the Canadian Pain Society. On behalf of the OMA section of anaesthetists and of the new OMA section of chronic pain physicians, I wrote the response to the proposed Bill 99 legislation, and you will find that in the handout I have provided.

I'm also here as an individual with long experience in the treatment of chronic pain and as a taxpayer to point out the problems with the current legislation and to suggest to you ways of far more cost-effective treatment and approach to workers with persistent pain. In other words, there is a win-win solution possible.

I'd like you to go to the second page of the submission, which shows a graph from the WCB's own data that basically show that after a number of weeks a percentage of injured workers go back to work but there is a percentage, approximately 15% to 20%, which doesn't. Of the 300,000 or so claims per year to the WCB, approximately half result in lost time from work. Of these 150,000 individuals, 70% to 80% represent claims over back injuries, sprains, strains of the cervical, thoracic or lumbar spine. These are the problem cases. The problem is not people who lose a limb, who have major injuries that can be demonstrated on X-rays. There is little argument and litigation or problem regarding those cases. The problem cases are the ones where there is chronic, persistent pain which disables a worker from returning to his or her occupation.

The current legislation reflects that total confusion about chronic musculoskeletal pain which has bedevilled the medical profession. It is my profession that is guilty of these problems and I'll try to show where it all stems from. It starts with the fact that when I trained in medicine and currently in medical curricula there is very little useful knowledge being taught about chronic pain in general, and the commonest form of pain, which is low back pain, in particular.

Going back to page 1, I'm quoting some of the old so-called experts, starting with Alf Nachemson, who is a Swedish orthopaedic surgeon. He, after a couple of decades of somewhat fruitless endeavour, stated: "Doctors should not cure back pain, politicians should."

**Mr Bisson:** We haven't been too successful.

**Dr Thompson:** I know. A Scottish colleague of his, Dr Waddell, wrote in an award-winning paper in 1987 that 70% to 80% of people with back pain can benefit from surgery, but that only applies to 1% of all people with low back pain. In other words, this surgeon is saying that of 1,000 people with low back pain seven or eight can be expected to benefit from surgery. Surgery has long been overutilized. It's costly and it has caused a great deal of disability.

When this was established, psychologists entered the treatment arena, with Bill Fordyce, who is now nearly 80



years old, developing the idea of psychogenic pain and how faulty psychological processes led to some people having persistent pain. Ironically, the same Dr Fordyce in 1995 edited a report entitled *Low Back Pain in the Workplace* — I have brought a copy — which basically states that the medical treatment of low back pain has failed. Another expert, Dr Harold Merskey from London, Ontario, has shown how in fact a lot of the pain that was thought to be psychogenic has an organic basis — neurochemical or neuroanatomical/genetic.

I do not intend any disrespect, but I profoundly disagree with Dr Nachemson. You politicians cannot cure back pain. What you can do is to ask the old failed experts and their adherents, of which I'm afraid the Workers' Compensation Board experts are representatives, to move over and permit other approaches by other physicians who have learned from other experts how to approach the treatment of workplace injuries of the type we are discussing.

Implementation of the proposed legislation as is will result in a large number of individuals with potentially curable or treatable pain now being de-insured and written off and ending up on social assistance of some form or other. That's a lose-lose situation. There is a great deal of new data coming up from researchers, from science labs, from the pharmaceutical industry, so that people who have been difficult to treat, resistant to treatment are treatable and curable and can return to their previous work.

The experts who have taught me and from whom I have learned how to approach this start with Dr John J. Bonica, an anaesthesiologist who died in 1994. He wrote that the most common forms of pain are myofascial pain syndromes, which are the commonest forms of shoulder, neck, low back pain and "among the most frequent causes of severe, disabling pain." Here's the key: "Once recognized, however, these disorders are relatively simple to manage." That's what has been the problem up to the present with the rehabilitation that the Workers' Compensation Board has authorized.

Other experts — I'll bring out the book. Janet Travell started work in the 1950s. She's now nearly 95 years old. She wrote two volumes, of which this is one, with a co-worker on this type of pain. She was Jack Kennedy's personal physician. He had some low back pain, as I think you've heard.

The workers' compensation expert panel stresses evidence-based approaches. They have ignored a very large number of books, publications and scientific work and thus they have produced a very flawed, faulty concept, starting with the definition of the chronic pain states. They cite "chronic pain syndrome, fibromyalgia, fibromyalgia syndrome, fibrositis and (all) similar and related conditions." There is no mention there of myofascial pain syndrome, which is the commonest cause of low back pain in injured workers, as well as the neck-arm pain that is experienced by people who sit at keyboards, the so-called repetitive strain injury.

Myofascial pain can arise from so-called "trivial" soft-tissue injuries, which is why injury prevention may not be the answer.

I shall go on to specific comments on the proposed bill. The stated goals are to prevent chronic pain and facilitate a safe and timely return to work. This, of course, we all agree on. The key element is early, effective treatment, and the first-line individuals, who will be the nurse-managers, will have to be educated in how to recognize this form of pain and then channel the individuals who are found to be at risk for it towards effective treatment in an early and efficient manner.

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There is mention in the regulations of case management and, to me, that term has very negative connotations. It's something I'm familiar with from the rehabilitation of injured motorists in the Rae legislation about auto insurance. I believe that legislation is being redrawn currently because the case management industry resulted in very little benefit to the injured motorists and a large cost to the insurance industry. Effective case management would be based on the identification or flagging of individuals who are at risk for chronic pain, and this is key to understanding how 80% of injured workers return to work with or without treatment in approximately four to a maximum of 12 weeks.

The 20% who do not follow this path likely have, according to scientists, a genetic predisposition towards this form of musculoskeletal pain. It is multifactorial in that environmental stresses and, certainly, injuries will precipitate it. To talk about "usual recovery time," which is used repeatedly, yes, it will apply to the 80% who currently are not the problem, but it will fail the 20% who are programmed to go on to chronic pain, are at risk for chronic pain, and there is nothing in the proposed legislation that will actually effectively treat these individuals.

The other problem I have with the proposed regulation is that they identified these certain pain states, of which they neglect to mention the most common one, but nevertheless, this represents "pain for which there is insufficient evidence to indicate that a physical abnormality...is the cause of pain." That evidence does exist. I have provided quite a few references in the bibliography at the end of the handout.

I have wondered, as a layperson with no legal training, whether in fact to de-insure these individuals who may have genetic acquired predisposition to chronic pain might offend against a basic premise of British-Canadian jurisprudence, which is the "thin skull" syndrome, that somebody who is at risk should not be penalized when in fact they are injured.

Furthermore, the proposal states that the pain management team should consist of physician, psychologist, physiotherapist or chiropractor. I'd comment that for most of these individuals, since there is no psychological damage causing the problem, if we can remove their pain efficiently, very few of them actually need psychological intervention.

They have identified particular treatment forms: stress management, relaxation training and biofeedback. That's fine and relaxation training has been shown to be of some help. Biofeedback, however, is labour-intensive, requires

costly electronic equipment and has been shown to be no more effective than relaxation training.

In summary, the proposed treatment is ineffective. The time: Many people have said four weeks is unrealistic. If we can actually get to these people and treat them with effective treatment methods, then maybe we can do a lot with those four weeks. I have also added three case histories, which are on the third page, of patients who have been treated recently in my pain clinic and who, according to the outline of Bill 99, would all have been written off. They would have been denied further treatment. All three had their so-called injury as a result of a relatively minor trauma but it long-term pain and dysfunction persisted.

At the present time, I don't get to see these people until at least a year, often two years, down the road, which is when, as I said, they would be written off. The fact that we can still then turn them around and return them to work, at a cost, which I have included, that I think is considerable but is still a lot less than the projected costs for ineffectual treatment.

The Ontario legislation doesn't actually put numbers on it, but I obtained a copy of the Nova Scotia legislation, on which the Ontario legislation is modelled, and here they spell out that injured workers are to be treated for a total maximum of six weeks for a total maximum cost of \$10,000. I tell you, with effective treatment systems we can treat people for a lot less money than that and actually achieve results.

I ask you again not to allow Bill 99 to be passed the way it is but to allow those of us who can furnish a better approach, a more cost-effective approach, to have an opportunity. Thank you.

**The Chair:** Thank you very much. There is questioning time for only one caucus and it will be the Liberal caucus, please.

**Mr Patten:** Thank you. That was very enlightening. If the government listens to the scientific data, there's no question that there will be amendments to the bill, because the bill would not, as presently proposed, stand up to scrutiny and the testimony you have provided.

I'm trying to understand the scenario as you present it. Let me see if I'm correct. One is that part of the problem at the moment with lower back pain is that, number one, most doctors who are doing the examinations are really not trained and able to provide, in your opinion, a qualified diagnosis, and that in 80% of the cases the general rule of the thumb tends to work but most of the energy seems to be going into the 20% who have a variety of indicators and the record of surgery is very poor. There are alternatives.

I believe the legislation suggests that the board can overrule or suggest to someone that they may lose a portion of their benefits unless surgery is performed on them. Did you see that section in there?

**Dr Thompson:** No, I didn't see that section. I have seen it in practice up to the present and it's always horrifying. People who come to me who have had surgery are far harder to cure, so this definitely must change. In fact, I would like to submit to you that if Bill 99 were passed as

is, it would be very difficult to justify the continued existence of the Workers' Compensation Board, because the 80% who go on to get better with or without treatment can be handled very adequately with family physicians and so on. If we're about to cut off the difficult patients, then what's the function of this expensive bureaucracy?

However, if we could use the board and its framework to use effective treatment strategies, I would love to be able to train those nurse-managers. I would love to expand and provide a more detailed outline of an effective, cost-effective treatment program. I have an outline on page 6.

**Mr Patten:** How long do you think the training would take?

**Dr Thompson:** Actually, that would not take long. A week's course would enable most of these nurses to do an adequate job.

**Mr Maves:** On a point of order, Madam Chair—

**The Chair:** Let me thank the presenter.

Thank you for coming this afternoon.

The point of order from Mr Maves, please.

1430

**Mr Maves:** The Workers' Compensation Board is presently carrying out this consultation on chronic pain. I assume you have had receipt of that and are responding to the WCB's consultation also. If not, I can hand you this consultation paper and urge you to make your views known on that consultation.

**Dr Thompson:** I'd love to do that. The document I responded to is the draft. It's called A Description of Chronic Pain Program, and then the —

**Mr Maves:** That's right. Have you submitted your report in your response to WCB as they're doing that consultation?

**Dr Thompson:** I have submitted it to this committee and also to the OMA staff.

**Mr Maves:** Can I encourage you to submit it to them?

**Dr Thompson:** I'll be very happy to do so.

**Mr Maves:** I can even give you the address and so on.

**Dr Thompson:** I'll be grateful to have that.

**The Chair:** It's not actually a point of order. I'm not quite sure what it is, but it's okay.

**Mr Christopherson:** Since I am one of those who believe that the cut of compensation to chronic pain and mental stress sufferers is just based on saving dollars and has nothing to do with injured workers other than to leave them in pain without money, I would ask that either the legislative researcher or the parliamentary assistant provide the committee with the projected savings, which the board would obviously have done as they were preparing this particular document.

**The Chair:** Duly noted. The researcher has heard it and ministry staff as well.

#### PETERBOROUGH AND DISTRICT LABOUR COUNCIL

**The Chair:** Our next presenters, please, from the Peterborough and District Labour Council. Good afternoon and welcome.



**Mr Thomas Veitch:** Good afternoon. My name is Thomas Veitch and I am president of the Peterborough and District Labour Council. I'm sorry, but I don't have copies of my submission for everybody because I did it on the fly.

**The Chair:** If you want to leave it, the clerk will be happy to get a copy to each of us. It's your choice.

**Mr Veitch:** Okay. Thank you.

In recent years, it has been my experience to author a number of presentations for both the labour council and my local. Most have been with regard to workers' compensation. Most were very pointed and direct but rewritten because they were too caustic. With Bill 99, the gloves are off. This bill is the most frightening and ominous piece of legislation for working people and injured workers to date. I have written reports on Bill 162; Bill 165; the PLMAC agreement; the Royal Commission on Workers' Compensation; the Jackson report, *New Directions for Workers' Compensation Reform*; and now Bill 99, the *Workplace Safety and Insurance Act* — but for what purpose?

The Meredith royal commission on workmen's compensation in 1913 recommended a system of compensation to alleviate injured workers' claims on the court system, despite the fact that Meredith had been head of the Conservative opposition in the Ontario Legislature. It provided for guaranteed compensation for workers while impaired without an obligation to prove negligence in order to receive benefits. It was to be funded by employer liability by assessment administered by an independent agency, and in exchange workers would not be allowed to sue their employers for compensation. This has been referred to as the great compromise and established workers' compensation, not as a form of welfare, but as a right. Meredith's recommendations became law in Ontario in 1914.

On November 26, 1996, Bill 99 was introduced. Over the years, the WCB system was improved, allowing for direct input by labour and injured workers through a bipartite system both at the board and WCAT. Inclusiveness has been eliminated in favour of political employer appointees after the dissolution of the bipartite structure. Further, there are threats to disband the Workers' Health and Safety Centre, the ODP and OHCOW, all gains under previous governments that included Conservatives and Liberals, all worker protections. Why the change? To show that the government is proactive and responsive to business needs at the expense of injured workers? They seem to have lost the point of why WCB was established: so that employers could keep what is theirs.

On the question of unfunded liability and WCB in crisis, unfunded liability is the money owed to fund workers' claims from injury to grave, an amount funded by employer premiums. It is the entire cost of a claim until age 100, based on actuarial tables. The best analogy I can give is that it is the cost of everything you are going to spend for the rest of your life for food, shelter, entertainment, education, clothing etc. If somebody told you that you had to come up with all that money within a specified time or risk imprisonment, then I assure you prisons would be filled to capacity. Crisis comes from this, and if this crisis

were in fact real, why would the government reduce employer premiums?

As to the unfunded liability being a burden to taxpayers, we all know this is a crock put out there by the government in an attempt to press all the buttons, blow all the whistles, pull all the cords and confuse the issue with misinformation and lies.

Let's run through some of this new and improved WCB legislation. The purpose clause adds the promotion of workplace health and safety as the act's first purpose, as long as it's done "in a financially responsible and accountable manner." Bill 99 makes it apparent that Ontario statistically would be the safest jurisdiction on earth, and that's the government's goal. Claims would be reduced but not injuries. Lip-service would be paid to accident prevention and safe return to work.

Section 13 of the act provides for chronic pain and would be limited or excluded by regulation. The government has said it will create regulations that will provide benefits for chronic pain based on normal healing times. Chronic pain is a real disability which can last a lifetime. Board decisions under a vague regulation such as this will inevitably be reviewed by courts.

Section 21: A worker's physician will be forced to provide workers' employers with medical information about a worker's injury. The premise is to expedite return to work, but how many employers are going to use this information in a positive and supportive way to help a worker back to appropriate employment? If there is no problem with returning the injured worker to work, why would the employer need to see this medical information?

Section 40: This section makes it easier and more economical for an employer to force an injured worker back to work through a punitive return-to-work plan than preventing the accident in the first place. Like section 21, this section discourages prevention and is designed to paper over the real accident statistics and workplace conditions to help Ontario, statistically, to become the safest place on earth. It encourages harassing phone calls from the employer to the injured worker.

Section 42: This section replaces vocational rehabilitation with labour market re-entry. It does not mention whether the LMR plan is geared to approximate pre-accident earnings. Subsection 42(3) opens up the floodgates for privatization of vocational rehabilitation, placing the making of profit off the injured worker's misfortune as a higher priority than the worker's welfare. The worker will be forced to participate in the plan whether or not the worker believes the plan suits their needs.

#### 1440

There is nothing mentioned about what criteria will be used for determining the LMR, whether the plan will include a job search like subsections 52(12) and (13) of the current act provide, nor now the injured worker goes about objecting or renegotiating a more appropriate plan.

Finally, the office of the worker adviser will be prohibited from representing union members. This bizarre discrimination by government service appears to be an attempt to justify slashing the OWA's budget by 30%.

However, after investigating the OWA's client waiting list, only a handful of unionized workers are being serviced. Again, non-union workers will feel the brunt of the cutback.

That's my presentation, other than to say that Minister Witmer has said time and time again that her goal is to improve. From having a look at the act, I see very little that will improve the service or the enforcement of the act. The labour movement has always argued that ergonomics is the key to a safe workplace and it's just not there.

**The Chair:** We have three minutes remaining per caucus for questioning. We'll begin with the Liberal caucus.

**Mr Gerretsen:** We've started about three times now.

**The Chair:** Actually, no. I started with the government caucus, then we went to the Liberals. I apologize to you; I did. It's to the NDP caucus. Excuse me.

**Mr Christopherson:** Thank you for the presentation. Tom, you raised something that needs to be underscored as often as we possibly can.

Doctor Thompson, could you hold on one second. I didn't get a chance to ask you publicly, but I'd like to ask you something before you leave. Sorry to centre you out like that but I did want to have a quick chat with you.

Tom, you mentioned the fact that taxpayers do not owe this debt. It's amazing. I'll bet if you did a poll, you would find that 90% if not more of the population believe that the WCB unfunded liability is a debt of the people of Ontario and is tied into the debt-and-deficit arguments that exist in the political arena, and it's so important. Regardless of the gyrations of Mr Hastings, the fact of the matter is that employers owe that money. That's the end of that sentence, and we've got to get that message out, because I think there's a lot of people out there who think, "That's more of the debt and it's those damned injured workers." They buy the government's idea that there's a label on them that says "special interest" and therefore it's one of "them," and "them" is always the problem in our society. If we could just fix "them," everything would be okay. The reality of course is that any one of us can become "them" in a nanosecond.

Secondly, taxpayers don't owe that money. It's money that employers owe, and I appreciate your raising it.

**Mr Veitch:** Bill 99 makes it quite easy for it to become a burden on the taxpayer, because if people are not eligible for WCB or anything else, where are they going to turn except the public purse — welfare?

**Mr Christopherson:** Absolutely. In fact, we've had a number of presentations from our expert witnesses, professionals — doctors and the like — who have made that very statement. They've gone one step beyond their medical analysis and pointed out that if these people are denied, they're not going to be able to work because they're still sick and it is going to fall back. So you're right to the extent that this puts an added burden on, but the argument that the unfunded liability is a taxpayer debt is wrong, and we need to get that message out.

**Mr Jim Brown (Scarborough West):** Mr Christopherson, I'm so glad that you recognize the nature of the unfunded debt of workers' comp. I challenge your opinion

that the taxpayers are not ultimately responsible and have a contingent liability, if not a real liability, for the unfunded liability.

**Mr Christopherson:** I'll come to your riding and we'll have a debate.

**Mr Jim Brown:** The other thing is, lawyer Garth Dee tried to upset something called "generally accepted accounting principles" when he made his presentation earlier. As a professional accountant, I'm astonished at your statement that we pushed all buttons and that the unfunded liability is a crock. What lawyer Dee did earlier is he challenged an actuarial firm that stated what the unfunded liability was, and they're professionals in their field. He also challenged a chartered accountancy firm that prepared the financial statements and gave an opinion on the financial statements as to what the values of the assets were and what the unfunded liability was. I'm a little upset that people are taking runs at chartered accountants and —

*Interruption.*

**The Chair:** Order.

**Mr Jim Brown:** In actual fact, these are independent professional people that give their opinion. We pay them a fee, but they're independent.

I would just like to go over a couple of other things from 1986 until now. In 1986 there was a deficit of \$826 million; in 1987, \$484 million; \$659 million; \$1.119 billion; \$619 million; \$1.2 billion. In 1992, during the previous government's regime, there was a deficit of \$681 million, followed in 1993 by \$504 million. Not once were the accounting methods changed.

If you take those, plus the beginning balance of the unfunded liability, throughout the NDP regime everything has been consistent and it's produced the current unfunded liability. It all adds up and subtracts. So I don't know where you come up with your —

**Mr Veitch:** Okay. First off, you have to understand that the NDP was only a short-term government. They ruled for four years.

**Mr Hastings:** Five years.

**Mr Veitch:** Fine. The fact of the matter is that the Conservatives ruled Ontario for a number of years. There was the Peterson government. The unfunded liability was still there. It wasn't a problem then and it's my understanding from reading board documentation that the unfunded liability would have been completely eliminated by the year 2014 had things just carried on the way they were. If there is a crisis with unfunded liability, why in the name of God would the government be giving back 5%?

**Mr Gerretsen:** Thank you very much. I find it rather strange that Mr Dee is being attacked here this afternoon, when he's not present, on his financial figures which I quite frankly found to be extremely revealing.

**Mr Jim Brown:** That's why you're a lawyer and I'm an accountant.

**Mr Gerretsen:** Just a minute. If we're talking about fairness, about attacking people, I don't think we should be taking a shot at somebody that's no longer here to defend himself.



The Conservative government would like to have you believe that there's an unfunded liability of \$8.6 billion, but that's based on the theory that there will be no more work done in the province of Ontario and no more employers will contribute to that fund over the next 50 or 60 years, and that is absolute nonsense.

*Interruption.*

**The Chair:** Order, please.

**Mr Gerretsen:** That is the only scenario under which you could say yes, the money is owing by the taxpayers of Ontario. Because employers are going to be paying into the system over the next 50 years. As he has clearly indicated, the fund is no worse off than it was 10 years ago in real dollars, and besides that, in effect, the system has made about \$500 million a year over the last couple of years. So to attack him at this stage is totally unfair.

I guess the question that I have of you, Mr Veitch, is, how would you, in a perfect world, like to see this act — not the act that's before us but the current workers' compensation system — changed to actually make it a better plan for everybody, employer and employee?

**Mr Veitch:** More broad-based consultation for starts. The fact is that government cannot sit down and just say: "Fine, we've got consultants. We're going to hire them. We're going to have them do this." By God, we've got a roomful of people here, and guess what? In other cities we'd have other rooms full of people — injured workers, labour, business. They could all sit at the same table and negotiate how this is going to work best for all people concerned.

These are the real stakeholders. This is supposed to be an agency at arm's length from the government, but the fact is the government wants to pull it in. They want to just draw it in and say, "This is the way it's going to be, like it or not."

**Mr Gerretsen:** As I've already stated earlier here today, if the unfunded liability is really such a major problem for the government, why the heck are they cutting employers' premiums by 5%? I can't understand that.

**The Chair:** Thank you very much. On behalf of the members of the committee, your input this afternoon is appreciated.

1450

SD&G RESOURCE CENTRE  
FOR INJURED WORKERS

ONTARIO NETWORK OF INJURED  
WORKERS GROUPS

**The Chair:** I call now representatives from SD&G Resource Centre for Injured Workers.

**Mrs Beate Wildraut:** I'll share my time with Mr Karl Crevar and Mr Randall.

The first thing I would like to do is stand up and have a moment of silence because what I'm going to present hopefully will wake up some hearts in here.

*The committee observed a moment's silence.*

**Mrs Wildraut:** Thank you. My name is Beate Wildraut, president of the SD&G Resource Centre for Injured Workers in Cornwall, Ontario. I've been an injured worker since 1988. In 1992, after two surgeries and an unsuccessful return to gainful employment, I dedicated my time to improving the conditions of injured workers in our area.

I brought with me a brief that I asked a lady to write up for me. In late November, I was a witness of a funeral. I would like to read this brief to you:

"I am a 41-year-old widow of an injured worker. Usually a story such as mine starts from the beginning. Unfortunately, there isn't enough time today to go into great detail so I will focus on the last year. My late husband had worked at" — certain manufacturers; we took them out — "and due to his injuries had lost all feeling in his fingers and the numbness was moving into his arm. He wore two braces: one was a full arm brace and the other was a hand brace. He had a lot of pain. The Workers' Compensation Board felt that the only job he could be trained for was as a tractor trailer driver, so they paid for his course, which he took and passed.

"They gave him one year to find a job. In that year, he looked almost every day. He was at the local unemployment office five days out of seven. On my days off we would both go out for the day and place résumés all over the area. But nothing ever came of it. When you put in an application, they always ask, 'Have you ever been on workers' compensation?' and he would always answer truthfully and say, 'Yes,' until the last few times. You see, if he didn't have a job within a year he would be cut off. They did it before. He once missed school due to excessive pain, so he did what most of us would do: he lied, praying, hoping that someone would call and tell him he had a job. But no one ever did.

"Well, in September of 1996 he was cut off. His year was up and no employer had hired him, but I guess you can't really blame them. I mean, what if his arm gave out and somehow caused a large accident? From September to November he still went to Ottawa every day to send out résumés, but still nothing.

"I guess after months of negative answers, depression really sets in. On November 9, 1996, I returned home from mass being said for my father, who had died four months earlier. I walked into the house and yelled to tell him I was home, but no one answered. I just happened to turn to the window in our parlour, which looks directly into our garage and there he was hanging in front of me. I ran out the door into the garage. I tried to hold his body up, hoping the rope might loosen. When I looked at him, I saw him stare at me with his tongue hanging out and mucous running from his mouth and nose, I knew in my heart that his fight was over. No more pain. No more worries. But I wasn't giving in. I had to let go of his body so that I could get help.

"I ran into the house and called his best friend, who lived next door, to come and help. I screamed so much that it is hard to remember what I said on the phone. His friend ran right over. He started screaming and crying. He

grabbed the chair or ladder, I'm not sure which, and yelled at me to hold it body up so he could cut him down. It seemed to take forever but the rope finally split and my husband fell into my arms and we laid him down. Our other neighbour, who was an OPP officer, ran into the garage. I remember begging him to do something, but he checked and there was nothing, no pulse or heart beat.

"When they arrived, they took my husband's friend in the car and questioned him for hours and they kept me in the dining room for questioning. Some of my family and my husband's family came over screaming and crying after seeing his body on the garage floor. None of us could go in to even hold him until they were all finished and the coroner was done. He lay there in the cold for four hours with strangers all around him. I remember thinking: 'Why don't you all leave him alone? He has been through enough. He is not an animal; he's a human being.' They finally let a few of us go in before the funeral home took him away. I saw his eyes again and heard our 21-year-old daughter begging her dad to come back. I will never forget those screams.

"That day, while the police were questioning me, they asked why might my husband do this. I thought, 'Why don't you ask his case worker?' Why doesn't the government ever ask us before they do anything — when they cut health care, when they cut pensions or when they cut people off? Most of these people really want to work, but for some reason they get trained for jobs for which no one will hire them. We are not just claim numbers or pension numbers; we are human beings who have a right to work and be happy.

"I received a letter from workers' compensation about a month after my husband's death, stating, 'Sorry to hear about your relative's death,' — notice the "relative," not 'husband.' 'You are not entitled to his pension nor any funeral expenses, unless you can prove his death was due to his injury.' To them, I say it differently: It was due to them.

**1500**

"The government wonders why people rebel or are very angry. Well, I know quite a few people who are angry over my husband's death and whom they blame. I hope and pray that any of you here today who are on pensions of workers' compensation don't give in or give up to or for anybody. Fight hard for what is yours and to keep what is yours. I pray my family will be happy again and not feel like we could have done more. If any of you are having a hard time and need a shoulder, my family and I could be that shoulder. Injured workers know how to get us, if needed. If anyone can help us in our fight for Rick, please contact Injured Workers in Cornwall. God bless you all."

**Mr Terry Randall:** Ladies and gentlemen, my name is Terry Randall and I'm an injured worker in Kingston. I've been sitting here all day listening to some interesting information and a whole bunch of garbage.

I filed a claim for workers' comp on the advice of my physician a year ago in May and I've been waiting since September 1996 to get an appeal to the Workers' Compensation Board. They did an investigation and they said,

"Oh, we know you did the work, but we don't believe it caused any damage." However, X-rays and doctors don't lie for me.

I agree that we need reform on workers' compensation. We need reform because without my wife working, I'd have lost everything I worked 30 years to get. You people are going to take that all away because of your blatant stupidity. There's no other excuse for it. It's just dollars-and-cents stupidity, and I don't think there's one of you here who's hearing a word I'm saying. That's what really makes me sick.

You people are our elected representatives and you're supposed to look out for my best interests. You're not doing that and you are not looking out for the best interests of the citizens of Ontario. It's time you woke and smelled the coffee. This is not the Workers' Compensation Board any more. I think you should change the name. When you change the whole format, change the name to the Employers' Protection Association because you're not doing us any favours. I mean, how many people do you want to commit suicide, how many people have to die because of your blatant stupidity?

The big shots who are sitting up there, they don't come down and talk to us. They send their donkeys down here to fight with us. They send you guys to come down here and sit and laugh and makes jokes and think it's a big joke. You're the ones who are on the front lines and you don't care. I'd like to see one of you guys come down from \$5,000-a-month wages, which I was making when I was injured and put off work, to \$600 a month and survive. That wouldn't buy your damned coffee.

I don't know why we're here, because you aren't hearing what's going on here. You guys are just not hearing. You're deaf, all of you. Every time somebody brings up a point, all I hear is dollars and cents — "How much money are we going to save?" Crap. How much money is a life worth? Is it 25%, 10%? You guys aren't worth two cents, none of you — not two damned cents.

**Mrs Wildraut:** By Bill 99 workers are now being slaughtered by this government, because we have no protections whatsoever.

**Mr Karl Crevar:** Good afternoon. My name is Karl Crevar and I'm president of the Ontario Network of Injured Workers. Hopefully, I didn't upset anyone by coming back up here. I was asked to sit in with Beate from SD&G and the injured workers. I stated the last time that I would not refuse any assistance I could provide.

This is the last day, obviously, unless the government side finds within its heart to reconsider hearing the human stories that you heard today. These are real people, real stories. Our children came before you. What we feel is happening to injured workers, what will happen to workers in the future — those are our children. We hear the discussion — I don't know the gentleman's name on the end here — about the unfunded liability, the dollars and cents. We can argue the realities back and forth. The reality is, your government, your Premier created a crisis for the need to change and reform the WCB.



The reality in Bill 99 is that workers are going to be robbed of \$15 billion. What sort of message are we sending our children of the future? The plight of those children who have the everyday life they live with their parents is that they're being deprived of parenthood. Think carefully on Bill 99. Think very carefully because its impact is going to be devastating. There's a huge impact. It's not the workers who got hurt at work who are at fault. You're going to drive them into further poverty. You're going to deprive our children of their rights for a future.

I've said it before: I don't know what this magic thing is with Mr Harris about the year 2001, this millennium. What is this millennium? All we can see in Bill 99 is that injured workers are no longer productive, so they're of no use, we're going to throw them on the scrap heap. Morally, that is wrong.

We asked you time and again, and I ask you again, Mr Maves, on behalf of injured workers in this province, if you want to hear the true stories, give the people and the injured workers of this province an opportunity to come before you. Don't shut the door. Withdraw Bill 99. Get back to the table. Talk to the people it's going to impact on. Talk to us. Thank you very much.

**The Chair:** Thank you very much. There is time remaining for questioning from only one caucus, and that will be the NDP caucus. Mr Bisson.

**Mr Bisson:** I was expecting Dave to do a question. I know for a lot of people it's frustrating to come here because you get the impression that the government isn't listening, but what you have to know is, the fact that you're here in sheer numbers really brings home to this government how serious this issue is and that people are not going to stand by and watch their Ontario being taken apart brick by brick by a government. At one point they're going to have to pay the price.

I know it might be discouraging at times because you don't think they're listening, but let me tell you, when they go back to their caucus rooms after having gone through these hearings, they're going to be talking about what injured workers and others have to say. What they'll have to say is, "They're pissed at us," and hopefully that will slow them down on other issues in the future. Hopefully, because of your actions we here in the opposition will be able to get some amendments of this legislation. Even though we want it scrapped, maybe we can get some amendments and make it a little better.

**Mr Crevar:** Thank you, Mr Bisson. Could I respond to that?

**The Chair:** One minute, please.

**Mr Crevar:** Very quickly. I want to thank you for your comments, Mr Bisson. I can assure you, if this government is not going to listen to us, and as long as I'm heading up the Ontario Network of Injured Workers Groups, I'm going to be your worst damned nightmare for the next two years. You can rest assured of that.

**The Chair:** Thank you very much. Mr Bisson, did I hear unparliamentary language when you were speaking?

**Mr Bisson:** If you did, I withdraw and apologize.

**The Chair:** Thank you.

1510

## ONTARIO MASONRY CONTRACTORS' ASSOCIATION

**The Chair:** Calling now our final presenter, the Ontario Masonry Contractors' Association, please. Good afternoon, sir, and welcome.

**Mr John Blair:** My name is John Blair. I am the executive director of the Ontario Masonry Contractors' Association. On behalf of our membership and the people I represent, I'd like to thank this committee for the opportunity we have to come and express our views and our concerns.

By way of introduction, the Ontario Masonry Contractors' Association was established in 1971 and includes manufacturers, suppliers and dealers within our masonry industry, as well as qualified masonry contracting firms. It is also the umbrella organization which is responsible for the organization and implementation of our provincial bargaining with both the International Union of Bricklayers and Allied Craftworkers and the Labourers' International Union of North America. In short, we are unionized masonry contractors.

The OMCA is in general agreement with most of the revisions outlined in Bill 99. However, we are concerned about any structure which would not recognize what we believe is the unique nature of the construction industry in general and the unique character of the masonry industry in particular. The demographics of our industry clearly outline, we believe, that we are an industry in transition, that we have begun a very specific program in response to these demographics of apprenticeship training which we believe will meet the demands of the future, but we are met at the same time with a need to use the high skills of an aging but very capable workforce. Any fair compensation program must incorporate these realities.

The employer-employee relationship in the construction industry is very different than in manufacturing or commerce. Our collective agreements for the most part we believe are restrictive and severely limit the ability and the control the employer may have in implementing return-to-work programs.

As a unionized organization, we are very concerned that our rate classification is unfair and does not in any way recognize the efforts that have been put forward by both unions and contractors in such programs as the Construction Safety Association of Ontario/Masonry and Allied Craftworkers health and safety manual and the CSAO provincial committees; the provincial committee of course being responsible for finding bipartite involvement in the industry for the health and safety of everyone we employ.

We believe an honest analysis of our rate classification data would clearly reveal that the unionized masonry industry is operating in a more responsible and a much more diligent manner than some of our non-union or unorganized sectors. Our members for the most part are frustrated by this situation.

We believe it is possible to have a compensation system which would heighten the benefits available to the injured workers while at the same time would reward those within the industry who would choose to operate in a fair and equitable manner.

I thank you for your time. I realize for you folks this must be a most interesting afternoon. I respectfully submit this on behalf of the Ontario Masonry Contractors' Association.

**The Chair:** We do have a number of interesting presentations. We have just under five minutes per caucus for questioning. We begin with the government caucus, please.

**Mr Hastings:** Mr Blair, I wonder if you could go into some detail as to the operations of the apprenticeship program that you have with your union partners, and I wonder if you could comment on some specific suggestions which have been presented by other presenters in both Sudbury and Burlington.

For example, the construction association up in Sudbury suggested, either directly or implied, that the cost of return-to-work programs, particularly because of the nature of the industry, be pooled or shared, particularly for the small one- or two-person company; two brothers, say, own it and probably have three or four people working for them and they're in northern Ontario.

Mr Nolan from the Hamilton Construction Association suggested that a similar approach or some kind of credits be applied for return-to-work provisions in an agreement. I asked him afterwards, because of the very nature of the industry — fragmented, project-managed, mobile, older-aged folks, with new people wanting to get into this industry — when an injured worker through no fault of his or her own incurs an accident on the job and probably doesn't have much prospect, depending on the severity of the injury, to get back into their pre-accident employment, whether the return-to-work program would probably be more oriented towards supply or related-type industries rather than the actual job they were in, much as they would like to get back in it, depending on the severity and complexity of the accident.

Those are the general themes that have come up to try to deal with the nature of your industry in terms of making it more successful for return-to-work provisions.

**Mr Blair:** I believe your question was twofold. It was dealing in the first part with regard to apprenticeship, the second element being related to return to work. I can only speak on the issues related to the masonry industry. I was a contractor for 23 years before I took on the position as executive director for our association.

The nature of the work that we do: I don't think it's a quantum leap to look at the nature of most construction work, but ours tends to be very labour-intensive. It requires a great deal of labour, hard body work, in some regards; high skills but hard body work. For an injury to happen to one of our workers and to believe that in some method, if it were a serious injury, they would actually be able to carry on all of the duties they would need to carry on I think is being very optimistic. Hypothetically, you

would want that to happen, but I don't think in the real world, quite honestly, you would be realistic in planning for such things.

That's not to say that it couldn't happen, but the nature of our particular work would demand that there has to be a reorientation or a retraining to some other area that might be either secondary or tertiary to our industry. I don't think the success ratios of return-to-work programs for the masonry industry have been very successful.

With regard to apprenticeship, as I said in my presentation, the demographics of our industry are such that we are very concerned and we have confirmed that we require younger people in our trade. I am pleased to say that we do have a cooperative effort that goes along with our labour people in this regard. We are fortunate as unionized contractors that we have a working relationship at present with our unions. We work hand in hand.

Our training centre, the Ontario Trial Trades Training Centre, is in fact a joint-trustee program. We are accredited there for teaching masonry skills to young people. I cannot honestly say that I would be of the opinion that there would be a lot of success if we were looking to have workers put into that program who had been injured unless it was to learn new skills. I just can't envision that kind of thing operating there.

I don't know if that properly answers all of your question, but that's as good as I'm going to do here this afternoon.

**Mr Hastings:** In other words, injury prevention or accident prevention education is the real antidote to any worksite injury for your industry.

**Mr Blair:** I think the cost related to prevention and the things we should be doing in a more cooperative educational manner are far in excess and far more beneficial than those things that happen after the fact. We've had people who have been injured on our job sites and, independent of any other economic consideration, there's a personal side to this thing. When people get hurt, there's no question about the fact that their lives change. You have to address that. That's my answer.

1520

**Mr Patten:** Thank you, Mr Blair, for your presentation. Some of the things you said we had heard, but some things we hadn't heard before. Were you suggesting that there be a new category? Are you lumped in right now with the whole construction industry, or is it part of it? Are you suggesting that the unionized masonry contractors be a separate category or just the unionized section of the construction industry itself?

**Mr Blair:** I'm only speaking on our particular rate classification, which is 741. It has been a frustrating part for our people as unionized contractors to look at our industry statistics, to look at the frequencies with which we are compared and then try and address some of the things that we know our members are doing. I'm not in any way, shape or form going to tell you that we are a perfect house — we are not and there's lots that we as responsible contractors could be doing to better the work sites for the people — but in comparison to what I con-



sider to be the less organized, less structured, less accountable facets of masonry construction in this province, I believe that an honest analysis of those statistics would reveal that when there is a cooperative union-management effort going on — and I mean a realistic effort, not just by way of structure — that result is tangible and can be verified. That is something we believe strongly and we would like to see the government, at least in an honest approach, analyse this data and come back and address this issue.

**Mr Patten:** I like the idea. I think it helps everybody in the long term. It helps the employers who are responsible and good employers. It recognizes that and it provides an incentive for those who are not as responsible to get their act together and to have safer workplaces. It also provides for being able to identify specifically where the accidents tend to happen and a better ability with smaller numbers to go in and focus on those particular contractors or whatever they may be in any sector. I like your idea. I think it has merit and I think it should be considered.

**Mr Christopherson:** Thank you for your presentation today. I don't know how long you've had a chance to be in the audience. Have you been here at all for any time?

**Mr Blair:** Actually, about 10 minutes.

**Mr Christopherson:** We've been having quite a discussion today, particularly around chronic pain. We've had an expert witness come in, Dr Thompson. She and others have made the case that the government's move to eliminate chronic pain after the usual recovery time virtually eliminates people receiving compensation for chronic pain and is going to force them to either go on social assistance, ultimately, or go back to work when they're not properly healed and likely to reinjure themselves and perhaps a colleague.

Given that, our caucus has particular concern about this move by the government, and I appreciate the documents that were provided to me. This is about saving \$1.4 billion. That's what the change in the chronic pain legislation is going to save — \$1.4 billion. That's all this is about: saving money. I wanted to ask you, given the nature of the injuries that your employees face, how you feel about that part of Bill 99.

**Mr Blair:** First of all, there's no question, just in the short 10 minutes, that it's obvious that there are tremendous emotional issues surrounding all of these revisions, the other part being, of course, that I am not a medical doctor, so I won't address in any way, shape or form those elements of chronic pain.

This will be a very unpopular statement. I think we have to come up with a better means by which we address the honesty and at the same time the importance of properly dealing with people who have chronic pain. I think that there has to be an integrity put back in this system that has been sadly lacking over the last number of years. I don't want to in any way try and undermine or circumvent the importance or the problems that people who have chronic pain have and try and relate that to a \$1.4-billion number. People are people. They are individuals and their pain is real. I don't want to be seen or even perceived as

manipulating a position based on that with somebody who is in a lot of agony in the course of it. It's an emotional issue and I'm not smart enough to have the proper answer for that one, most certainly.

**Mr Christopherson:** That's fair enough. Quite frankly, most of us in politics, even those who go on to become ministers, are not experts in the field. You don't have to be a doctor to be a health minister or an engineer to be the Minister of Transportation. We rely on experts and we pick people of high quality and good reputation. They provide the advice and then the decision is made. That's the way this works.

We're in the same boat as you. We have to make those decisions, which is my segue into asking you — I'm not trying to trip you up — do you not think, though, that it's appropriate for the government to pay close attention to these expert witnesses? I stand to be corrected by the government members right now, but I can't recall a single professional who came in here and said: "The problem with chronic pain out there is you've got a lot of malingerers and you've got a lot of fakes and a lot of fraud. That's what the real problem is." I don't recall any expert coming in and saying that, doctors, but we sure did have an awful lot of physician experts who came in and said the opposite, that there isn't that much, that that's not what the problem is, the problem is improper treatment etc. But they all agreed that by making this change you're going to leave a lot of legitimately injured workers out in the cold with their pain and no income. Based on that, do you not believe that the government ought to pay very serious attention to these submissions?

**Mr Blair:** I believe that anybody who would have any sense of compassion or any sense of justice, I don't care whether they're the government or the guy standing on the street corner, when presented with those issues would have to have a strong sense of making sure that things are done right.

I also believe there are things that can happen in life and no amount of our trying to work around them or plan for them or deal with them will properly put them where they ought to be. I don't care how much money I would pay someone for the fact they're injured. At the end of the day, when it's all said and done, they will have been injured.

I also believe that, for much smarter brains than mine, if the government is planning these revisions, as you obviously are or you wouldn't be here, it may be prudent for them to have a graduated, monitored system which allows for the fact that there has to be a living agreement, that you put together a program that is not legislated for the political ability of it but because it's moving and because it has an openness to it. It is a concerted effort by everybody to lay aside the political mantle and deal with these people properly.

**Mr Christopherson:** That's exactly what we have now. By limiting it, the government's putting an artificial cap. If you were on the work site and you hurt yourself, they would say, "Here's the meat chart. You will be healed," almost as if they could lay their hands on you and

make it happen, "in four weeks and after that you're out of luck." The reality is that in most cases, if it's going to take longer than that, it's just going to take longer than that and that's the way your body is.

We have some real concerns, backed up by the experts, and it will be a real crime and a shame if these members of the government caucus here don't go back to the Minister of Labour and say, "This doesn't hold." They should say that about a lot of things, but in particular they ought to say that about the chronic pain: "This doesn't hold, we're going to hurt an awful lot of people. We can't do that." You've looked these people in the eye, you've seen the tears, you ought to go back and do that and properly represent your constituents.

**The Chair:** Mr Blair, thank you very much. On behalf of the members of the committee, we appreciate you taking the time to come this afternoon.

Colleagues, that is our final presenter for this afternoon. Just a reminder from our researcher that it's hoped

that summary number 2 from the research department will be ready for us on Friday afternoon — trying for Friday afternoon, it might be first thing Monday morning — and to let you know —

**Mr Christopherson:** Point of order.

**The Chair:** I was just about to adjourn.

**Mr Christopherson:** I appreciate — I said this once — whoever provided this, it might have been Jennifer, but it doesn't break down the mental stress. It just says, "retirement income," "prospective benefit reduction," "revised indexation," "chronic pain," and that's it. Somewhere in there would be a separate line for the mental stress, and if that could be found out, I'd appreciate it.

**The Chair:** All right. Colleagues, we'll reconvene at the call of the Chair when the Legislature resumes next week.

*The committee adjourned at 1530.*











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**Legislative Assembly  
of Ontario**

First Session, 36<sup>th</sup> Parliament

**Assemblée législative  
de l'Ontario**

Première session, 36<sup>e</sup> législature

**Official Report  
of Debates  
(Hansard)**

Wednesday 27 August 1997

**Journal  
des débats  
(Hansard)**

Mercredi 27 août 1997

**Standing committee on  
resources development**

Workers' Compensation  
Reform Act, 1996

**Comité permanent du  
développement des ressources**

Loi de 1996  
portant réforme de la Loi  
sur les accidents du travail



Chair: Brenda Elliot  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU  
DÉVELOPPEMENT RESSOURCES

Wednesday 27 August 1997

Mercredi 27 août 1997

*The committee met at 1532 in committee room 1.*WORKERS' COMPENSATION  
REFORM ACT, 1996LOI DE 1996  
PORTANT RÉFORME DE LA LOI  
SUR LES ACCIDENTS DU TRAVAIL

Consideration of Bill 99, An Act to secure the financial stability of the compensation system for injured workers, to promote the prevention of injury and disease in Ontario workplaces and to revise the Workers' Compensation Act and make related amendments to other Acts / Projet de loi 99, Loi assurant la stabilité financière du régime d'indemnisation des travailleurs blessés, favorisant la prévention des lésions et des maladies dans les lieux de travail en Ontario et révisant la Loi sur les accidents du travail et apportant des modifications connexes à d'autres lois.

## SUBCOMMITTEE BUSINESS

**The Chair (Mrs Brenda Elliott):** The standing committee on resources development is called to order for the purpose of receiving the subcommittee report, dated August 20. Is there a mover for this motion?

**Mr David Christopherson (Hamilton Centre):** So moved.

**The Chair:** Any debate or discussion?

**Mr Bart Maves (Niagara Falls):** The government intended to wrap up clause-by-clause by September 15 and start clause-by-clause earlier than we have, so I would like to make a motion to amend the subcommittee report to replace the dates — really only two dates — to be September 3, 8, 10 and 15, which will give all caucuses two weeks to look at all the amendments and, I think, plenty of time to do so.

I therefore move that the subcommittee report be amended by deleting the following dates, "September 8, 10, 22 and 24," and replacing them with the following dates, "September 3, 8, 10 and 15."

**Mr Christopherson:** I'd like to know what the hell is going on. We had a subcommittee meeting where we spent the better part of an hour. I had other things to do at that time, as did other members, but made that a priority because it is important. We sat and we had representatives

from the government, from the official opposition and from the third party and there were a lot of different dates being kicked around.

We haggled over them, talked about them and eventually reached a compromise, as you know, Chair. I remember you acknowledging with some glee that it was nice for you to see this group agree on anything and indeed we did agree on those dates. Then we picked up the rumbling that the government wasn't happy, that this didn't suit their needs and they were planning to roll in here today and use their majority to upset that unanimous decision, and that's exactly what we're seeing.

My point to this is, what the hell's the point in the subcommittee meeting? I could appreciate it if Mr O'Toole had come into that meeting, or anyone else as a representative of government, and offered up dates that the Liberal member and I could not agree with and ultimately it was brought here and the will of the government would prevail because you have the majority. I wouldn't be happy, but I would understand that that's the process we live in. That's not what happened. We were told by Mr O'Toole on behalf of the government that these dates would work, that he could live with this, and we walked out of that meeting with total agreement.

I would say to the government, you've got all the tools available to a majority government in Ontario to at least handle a little subcommittee meeting and make sure whoever comes in has the right marching orders. If you can't do that, if you're so incompetent that you can't even manage a subcommittee meeting, then it's not our problem; it's your problem.

I take great exception to the fact that we would sit down and reach agreement with a representative of the government, and if that representative did not have the mandate or the information to bring to that subcommittee meeting, fine. Change the time of the meeting; don't have the meeting, go straight to full committee. But it's not right that you would come into that subcommittee with a representative who would lay out what his needs are on behalf of the government, and we would begin to haggle and spend the better part of an hour coming to agreement only to find somebody high up in this government has decided they want veto power.

I would say to the parliamentary assistant, through you, Chair, if that's the way you're going to run this place, why bother having subcommittee meetings? Why even pretend that you care what we have to say? Why don't you just



admit the reality and ram through whatever the hell you're going to do? What hurts is the charade and the sham of holding a meeting and coming up with agreement. We went into that meeting as people of goodwill. We really did. This wasn't the nuts and bolts of Bill 99. It was merely setting up the dates to do the clause-by-clause. There was no reason we couldn't sit down and come up with an agreement, and we did just that.

It's very troubling and very upsetting to find that somebody wants to have a veto power over that decision. I resent the fact that this meeting has been called for the sole purpose of overturning a decision that had the unanimous support of the three parties involved. I would ask the parliamentary assistant to have the integrity to withdraw this motion and recognize that it's not morally in order and that that's not the way we do business. If you wanted something different, you should have been at the meeting yourself or sent in someone else with a different message, but to do this after the fact is absolutely unacceptable.

**Mr Richard Patten (Ottawa Centre):** I would underscore what Mr Christopherson just said. We were not told of any date on the 15th, by the way. We were informed that the government wanted to see this through and dealt with by the end of September. That's one of the reasons why the recommendations for September 22 and 24 were made, that it was a week prior to the end of the month and that seemed satisfactory to the members who were on the subcommittee. That's what it was.

I believe there was a problem for Mr Christopherson on the date of the 3rd. There's a problem for me on the date of the 15th in being here; I won't even be in town. But I take his point that there's no point in having a subcommittee if the government is just going to say, "Here's the way it is," and you're just going to process us. "We're busy and we can do other things." Nobody likes to be processed.

You said it would give us a couple of weeks to look at some of those amendments. When we had less than a week to put in amendments and that was the final date in the time allocation motion, that meant we were pushed and pressured with the amendments we even have in now. That's the time you need. You need time to consider your amendments that you put in, not after the fact because it's too late now to make any amendments. So that does no good. That has no value for us.

It would be an embarrassment, I think, to say that there's any value in having a subcommittee when in fact you had a prearranged set of dates and you should just have come in and said that and we would have worked with that or whatever. Even with your revised schedule, sticking so closely to September 15 is a problem.

1540

**Mr John O'Toole (Durham East):** I would take some difference with the views expressed by Mr Patten and Mr Christopherson. As they know, those meetings were held and they were interrupted by a vote, and in that process, when I first came in as the substitute for the parliamentary assistant on that subcommittee, I had some knowledge at

that time that the government's objective was to complete the hearings and the clause-by-clause by September 15. I made that very clear and I want to go on record as making sure that statement was very clearly made, Mr Christopherson, in the very first phase of that meeting.

When we came back in the second phase of that meeting, both Mr Christopherson and Mr Patten had extenuating circumstances, which could be whatever kind of tactic you want to imagine, and I'm not suggesting that, but to impugn me by saying that I had agreed would be to say — I think we tried to facilitate, but I didn't feel as a substitute that we were pre-empting it beyond the week. I think this amendment recognizes that there are really two dates that are changing. The other two dates that were agreed on at that meeting are still in place, so I don't see the failed process in the subcommittee meeting.

I suspect, being a substitute, I wasn't fully empowered or mandated to make exclusive decisions on behalf of the government and I'd make that very clear, but there were other parties at the meeting and perhaps they would like to state. I don't feel that we've compromised the utility of the subcommittee meeting or anything else. At the end of the day, I listened to everyone else and there didn't seem to be any problem, except we had to exclude one week for one reason and one week for another reason, which pushed us past the 15th and I clearly said the 15th was the drop-dead date.

**Mr Maves:** I just want to reiterate that the legislation has been out for almost a year now, so there has been plenty of time to prepare amendments and there was a week following committee hearings. I think it's time to move forward on the bill. As Mr O'Toole has just reiterated, we always intended to wrap up by September 15. We believe that two weeks to go over the amendments is plenty of time. With regard to schedules of individual members, I think all members of this Legislature know that we can't run committees at the whimsy of individual members' schedules.

**Mr Patten:** Yes, the legislation has been out for a while, but what you are suggesting, Mr Maves? There's no point in listening to the representations of the hearings?

**Mr Christopherson:** Exactly.

**Mr Patten:** Because we did wait until we heard what people had to say, and all of the people.

**Mr Maves:** And so did we.

**Mr Patten:** You can't say you're going to draft your amendments six months before you even have hearings and listen to the public and the people who are affected most by this legislation. With all the resources you have available to you, which is 10 times what we have available to us, we have to do this ourselves, like two people who are not lawyers going through all of this making recommendations, so that's quite different.

I would ask Mr O'Toole if he did not suggest that the end of September during that particular meeting was not the overall framework we were working on, because I recall vividly saying if we work with September 22 and 24, this will still give you a week before the end of the month, and I believe that was said.

Third, if this was just, "We'll see how this works out," why then would you have a subcommittee recommendation that says, "Your subcommittee met on August 20, 1997, and agreed to recommend that clause-by-clause review of Bill 99, the Workers' Compensation Reform Act, 1996, take place on" the dates that now you want to overturn?

**Mr Christopherson:** I would ask the parliamentary assistant to please not insult us by suggesting that something trivial took place at the subcommittee meeting in terms of picking these dates. At least be big enough and adult enough to take responsibility for what you're doing. Don't try to justify it by saying there was something that went on at the subcommittee that shouldn't have, and when you say "at the whimsy of individual schedules," you damned well know, you've been around here long enough now, that when you hold meetings like that to make decisions like this, that exactly what people do is try to accommodate each other's schedules.

The Liberal critic was at every one of those hearings across the province, as was I, and it's important for our party and our perspective to be at those meetings. You do compare schedules and you take a look at other things that are happening. That's exactly why you have a subcommittee meeting. Please don't suggest that it was kind of whimsy.

Further to that, Mr O'Toole talking about tactics, I can't believe you're sitting here and offering up this drivel. You also know that at that meeting we were all trying to accommodate one another and trying to reach agreement. Nobody was being petulant, nobody was being difficult. We were all trying to find four dates that would work for all of us so we could get on with the business at hand as ugly as it is.

I'm not going to say that you didn't state the September 15 fact at the beginning. I didn't take detailed notes of that. But I do remember at the very end I said, "Okay. It looks to me like we've got agreement," and I recall very clearly when I asked you, "Have we met all the marching orders that you've got from the government?" you said, "Yes, I was to make sure this was wrapped up by the end of September." My recollection supports Mr Patten's as to that date.

I don't think we get anywhere by talking about every single little thing we all said at that meeting, but if you want to spend all afternoon doing that, fine. At the end of the day, you're still going to do what you want; you've got the majority. But I would at least expect you to take responsibility for this and have the decency to apologize for the fact that you screwed up rather than trying to justify that which is impossible to justify.

I would really like to hear the parliamentary assistant on behalf of the government say, "Yes, we screwed up and that's why we're having this meeting today and that's why we're using our majority to set it right." Have at least the decency to do that.

**The Chair:** Any further debate?

**Mr Patten:** I'd like to know whether there's any flexibility on the new dates, or is that a fixed motion?

**Mr Maves:** It's a fixed motion.

**Mr Patten:** The parliamentary assistant knows that I will be representing the Legislature of Ontario — that's why I would not be here — at a two-day conference, which was voted by a committee of this Legislature.

**Mr Christopherson:** They don't care. They don't give a damn about anybody but themselves.

**The Chair:** Further debate? All right then, I will call the vote on the amendment that's before us, please. All those in favour?

**Mr Christopherson:** Recorded vote, please.

## Ayes

Galt, Hastings, Jordan, Maves, O'Toole, Spina, Stewart.

## Nays

Christopherson, Hoy, Patten.

**The Chair:** The amendment carries. We now move to the subcommittee report as amended. Any discussion?

**Mr Patten:** What's the point?

**The Chair:** Then I call a vote on this. All those in favour? All those opposed? It is carried.

*The committee adjourned at 1548.*

## ERRATUM

No.	Page	Column	Line
R-60	R-2326	1	37
	R-2329	1	42
	R-2329	2	14

### Should read:

**Mr Bob Cruickshank:** Bob Cruickshank, president of

**Mr Cruickshank:** You have to understand companies. I

**Mr Cruickshank:** The problem is that they don't be-



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Erratum..... R-2455

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**Legislative Assembly  
of Ontario**

First Session, 36<sup>th</sup> Parliament

**Assemblée législative  
de l'Ontario**

Première session, 36<sup>e</sup> législature

**Official Report  
of Debates  
(Hansard)**

**Wednesday 3 September 1997**

**Journal  
des débats  
(Hansard)**

**Mercredi 3 septembre 1997**

**Standing committee on  
resources development**

**Workers' Compensation  
Reform Act, 1996**

**Comité permanent du  
développement des ressources**

**Loi de 1996  
portant réforme de la Loi  
sur les accidents du travail**





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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU  
DÉVELOPPEMENT RESSOURCES

Wednesday 3 September 1997

Mercredi 3 septembre 1997

*The committee met at 1549 in committee room 1.*WORKERS' COMPENSATION  
REFORM ACT, 1996LOI DE 1996  
PORTANT RÉFORME DE LA LOI  
SUR LES ACCIDENTS DU TRAVAIL

Consideration of Bill 99, An Act to secure the financial stability of the compensation system for injured workers, to promote the prevention of injury and disease in Ontario workplaces and to revise the Workers' Compensation Act and make related amendments to other Acts / *Projet de loi 99, Loi assurant la stabilité financière du régime d'indemnisation des travailleurs blessés, favorisant la prévention des lésions et des maladies dans les lieux de travail en Ontario et révisant la Loi sur les accidents du travail et apportant des modifications connexes à d'autres lois.*

**The Chair (Mrs Brenda Elliott):** Good afternoon, everyone. The standing committee on resources development is called to order for the purpose of clause-by-clause examination of Bill 99. For the ease of understanding what amendment we're working from and speaking to, I would just suggest to the members that the packet of amendments is arranged in order by number on the top right-hand corner. This is probably the easiest for all of us to follow, since there are so many amendments.

We'll begin on page 1, French-version title change. It's a government amendment.

**Mr Bart Maves (Niagara Falls):** It might be incumbent upon me, for the benefit of Hansard, to introduce who is at the table with me. Sherry Cohen is legal counsel to the Ministry of Labour. Marg Rappolt is from the policy directorate of the Ministry of Labour. Stan Bucci is a senior adviser on workers' compensation in the Ministry of Labour.

I move that the French version of the bill be amended by striking out "Loi de 1996 sur la sécurité et l'assurance des travailleurs" wherever it appears and substituting in each case "Loi de 1997 sur la sécurité professionnelle et l'assurance contre les accidents du travail."

The amendment is consequential to the French translation of the change in the names of the act, the board and the appeals tribunal.

**The Chair:** Any comments or questions?

**Mr David Christopherson (Hamilton Centre):** Just one question: Since this opens the discussion on the change of name of the board, could I ask who made a presentation or a suggestion during the public hearings that the name of the board be changed?

**Mr Maves:** It was the government's intention that we're changing the focus of the work of the board to a workplace insurance and safety agency with the new focus on preventing injury and a focus on education as well as compensation. We think that name change reflects that. I can't recall off the top of my head if presenters talked about that at the hearings.

**Mr Christopherson:** I would just note for the record that we'll have a broader discussion under the fourth motion so it's clear what we're talking about, but I would mention to the parliamentary assistant and members of the committee that there were references made during the public hearings, and every one of them that I can recall, unless you can show to the contrary, was opposition by injured workers, workers and their representatives. Changing the name takes away from the focus of compensating injured workers and fits more into your ideological agenda than anything to do with helping injured workers.

**The Chair:** Further discussion or questions? All right, shall the motion carry? All those in favour? Opposed? The motion carries.

**Mr Christopherson:** Can I have a recorded vote?

**The Chair:** You have to ask for that before we take the vote, as soon as I say, "Shall the motion carry?"

**Mr Christopherson:** Then I would like to ask for every one to be recorded from here on in.

**The Chair:** Fine.

All right, moving to page 2, please, a government amendment as well.

**Mr Maves:** I move that the bill be amended by striking out "Commission de la sécurité et de l'assurance des travailleurs" wherever it appears and substituting in each case "Commission de la sécurité professionnelle et de l'assurance contre les accidents du travail."

It's a similar rationale to the previous amendment, that it's consequential to the French translation of the change in the names of the act, the board and the appeals tribunal.

**The Chair:** Any comments or questions? I put the question: Shall the motion carry? Recorded vote.



**Ayes**

Arnott, Fisher, Jordan, Maves, O'Toole, Ouellette, Stewart.

**Nays**

Christopherson, Hoy, Patten.

**The Chair:** The motion carries.

Turning on to page 3, also a government amendment.

**Mr Maves:** I move that the bill be amended by striking out "Tribunal d'appel de la sécurité et de l'assurance des travailleurs" wherever it appears and substituting in each case "Tribunal d'appel de la sécurité professionnelle et de l'assurance contre les accidents du travail."

Again, this amendment is consequential to the French translation of the change in the names of the act, the board and the appeals tribunal.

**The Chair:** Questions or comments? I put the question: Shall the amendment carry? Recorded vote.

**Ayes**

Arnott, Fisher, Jordan, Maves, O'Toole, Ouellette, Stewart.

**Nays**

Christopherson, Hoy, Patten.

**The Chair:** The motion carries.

Moving on to section 1, no amendments. Any debate? Shall the section carry?

One moment for clarification; my apologies.

**Mr Christopherson:** Where have you got us right now?

**The Chair:** We're at the end of the third amendment, page 3. Those are general amendments affecting the whole bill, not to any one section specifically. So now we're moving to the top of page 4, section 1. No, I'm sorry; I'll get it yet. We're moving to section 1, which does not have an amendment, so there is not one in your book. I apologize for leading you astray. So there is section 1 with no amendments and my question is, shall section 1 carry?

**Mr Christopherson:** Are you taking comments?

**The Chair:** Yes.

**Mr Christopherson:** You're referring to the entire section 1, the name of the act?

**The Chair:** Your question is to —

**Mr Christopherson:** It's to you right now. I just want to make sure that we're on all of section 1 and that refers to the name change. The amendments we've done have referred to name changes throughout?

**The Chair:** Just one moment. We'll have to look at section 1 in its entirety.

Section 1 hasn't to do with the title, as its purpose is to enact schedule A.

**Mr Christopherson:** Schedule A, of course, for those who are here, deals with the bulk of the changes that are being made. I want to say at the outset that there's abso-

lutely nothing in this entire bill that does anything for injured workers. As we'll point out, in every amendment and every clause that's in here the whole intent is to take money away from injured workers, give it back to the employers who are supposed to pay for this, all of this under the guise of dealing with the unfunded liability, which is a crock.

If it was that much of a crisis, you wouldn't be able to afford to give back \$6 billion of the revenue that employers are supposed to pay. Also, you leave the impression consistently wherever we go and whenever you talk about WCB that somehow the debt and deficit are part of the taxpayer debt. The reality is taxpayers don't owe this money; employers owe this money.

Everywhere else you make changes — and again we'll come to that in the specifics, but since we're voting on the broader section now, I want to comment on it — everywhere you're making changes to eligibility, it's not to let more injuries to be recognized, it's to allow fewer injuries to be recognized. At the end of the day what you're going to do is say that injuries are down just because your stats are down. Well, your stats are down because you've disqualified so many people from legitimate claims.

What you've really done is push those injured workers back on to their own sick and accident plan, if they have one, and if not, on to the OHIP system, and ultimately, for far too many, on to the social assistance program. That's where it's going to show. That's where those injured workers are going to end up.

**1600**

Further, you talk a lot about education and accident prevention and health and safety, yet other than a quick, cursory comment in the preamble you do virtually nothing to provide safer workplaces. In fact, if anything, by watering it down employers are going to feel less inclined to support the act. When this goes in tandem with what you're doing with the Occupational Health and Safety Act, the Employment Standards Act and the Ontario Labour Relations Act, the fact of the matter is that workers in this province have lost on every front. It's just becoming so disgusting to sit here in hearing after hearing and day after day in the House and all you do is attack working people. You make titles of laws that say you're improving them. You stand up and make speeches that you're making it better, and then you go out and you attack the very rights that workers have. You all ought to be bloody well ashamed of yourselves.

Madam Chair, I also ask, request, suggest that we allow this section to stand down until such time as we've dealt with schedule A and the amendments to it, because this is an overriding, arching section. By passing this, the amendments to the schedule become less important. I think that to do it properly, we should deal with the amendments to schedule A first and then come back to section 1.

**The Chair:** Okay, then we would require unanimous consent to stand down the section before moving on to another. Do we have unanimous consent to deal with this schedule A?

**Mr Christopherson:** No, of course not.

**The Chair:** No, there is not unanimous consent. All right, then, we'll return to section 1. Any further questions or comments on section 1? I then put the question.

Shall section 1 carry? All those in favour? A recorded vote.

### Ayes

Arnott, Fisher, Jordan, Maves, Ouellette, O'Toole, Stewart.

### Nays

Christopherson, Hoy, Patten.

**The Chair:** Carried.

Moving now to section 2, please, which is on page 4. This is an NDP motion.

**Mr Christopherson:** Subsection 2(2) of the Workers' Compensation Reform Act, 1997: I move that the definition of "certified member" in subsection 1(1) of the Occupational Health and Safety Act as set out in subsection 2(2) of the bill be amended by striking out "Workplace Safety and Insurance Board" in the second and third lines and substituting "Workers' Compensation Board."

If I could speak to this one and the next motion, another NDP motion, both deal with leaving the name of the board as it is, the Workers' Compensation Board. What's so insulting about the new name is, first, you're going to spend \$1 million to change the name. If you're so worried about expenditures and costs and waste, why are you throwing away \$1 million to change the name of an act when nobody else asked for it to be changed except some of your backroom strategists?

What people find insulting is, with your new name, you're removing the words "worker" and "compensation." That's what this is supposed to be about. It's ensuring that workers are compensated. Remember the historic compromise of 1914-15? You want to forget that. You want to pretend it never happened. You want to give back employers their half of the bargain and deny workers the half that they already had, which was the right to fair compensation. We're going to come to the word "fair" pretty damn soon too and we're going to have something to say about that.

I don't know how you can defend — and I would ask the parliamentary assistant, through the Chair, how he defends — the fact that this system was set up for workers. It deals with employers and it brings the government into it, but it came about because of the deaths that were occurring at the turn of the century in workplaces, and they weren't being compensated. Rather than being sued in the courts, the employers agreed with a royal commission that workers would give up the right to sue but employers would pay into a fund that makes sure they get fair compensation. You're taking out the word "fair," and in the name you're taking out the word "compensation."

Parliamentary Assistant, on behalf of this government, how do you justify taking out the words "worker" and

"compensation," when that's why it was bloody well brought in in the first place?

**Mr Maves:** As I said earlier to this question in regard to a name change, we believe the name change demonstrates the reorientation of the board to a new responsibility for workplace safety and it reorients the board to an insurance system for people who are injured on the job. We had that discussion before.

**Mr Christopherson:** And we're going to have it again.

**Mr Maves:** I'm sure we will.

**Mr Christopherson:** You said it's reoriented towards safety. What exactly in this bill is going to make the workplace any safer, other than your preamble, which is just a throwaway?

**Mr Maves:** We don't think the preamble, part I, is a throwaway at all, because it's an overarching and guiding principle for the new agency.

**Mr Christopherson:** But I'd like something concrete that you're doing in this act.

**Mr Maves:** It sets out that the whole purpose is to promote health and safety in workplaces and to facilitate the return to work. I think that's more than just words; I think it's an overarching direction to the agency and its responsibilities. We're also having the board take over research. We're having the board take over and better coordinate the safe workplace agencies and so on. It's a whole reorientation of the system to prevent injuries and facilitate the return to work.

**Mr Christopherson:** I'm sorry, that's not good enough, not by a long shot. You keep saying in all your speeches and in every community, the few that we got to, and you said it again today, that you're reorienting to provide more focus on making the workplace safer. I can point out to you where you are attacking the rights of injured workers under Bill 99 in a great deal of detail, and plan to do so throughout the balance of these hearings. What I want to hear from you is, what concretely have you put into Bill 99 that tells the injured workers who are here today and everywhere else across the province that you really mean it?

**Mr Maves:** Part II is also with regard to injury prevention and the new functions of the board. The board's functions include "to promote public awareness of occupational health and safety, to educate employers, workers and other persons about occupational health and safety, to foster a commitment to occupational health and safety among employers" and so on. Again, it's a reorientation of the agency to do those things.

**Mr Christopherson:** It doesn't wash. No, no, it doesn't wash. The only reason you've got those words in there is because you killed the independent Workplace Health and Safety Agency, which was set up to deal with preventing injuries because the WCB didn't do it for 50 years. So those references don't wash. That doesn't cut it. What have you got in Bill 99 that forces employers to make their workplace safer? You said it, now prove it.

*Interruption.*

**The Chair:** Order, please.



**Mr Maves:** You asked me about the Workplace Health and Safety Agency and its new responsibilities, its new focus. I've told you that, under its functions and purpose, it has a new focus to educate and promote public awareness. Under its umbrella, it will look after the safe workplace associations and the training centres, and it'll better coordinate the entire system.

**Mr Christopherson:** Again, it's all words. Go ahead, finish.

**Mr Maves:** I think you're looking for me to tell you maybe the amount of money that we spend or something. You wouldn't do that in a bill. The only thing I can say to that is that quite some time ago, as you would know, the minister announced that with regard to occupational health research and education, they were going to have the board commit additional moneys to that. That's something concrete that's been done that wouldn't be done in a bill. That has been announced already.

**Mr Christopherson:** You know as well as I do, if it's not in the law, it ain't going to happen. The fact of the matter is, there's nothing in this law. You're making law the denial of occupational stress. That's law. You got that right in here. Boy, those workers are not going to get those legitimate claims. I'm asking you to tell me and tell everyone here today what concretely in law will force employers to make the workplace safer.

*Interruption.*

**The Chair:** Order, please.

1610

**Mr Maves:** I was just checking to see if there's anything additional that I need to add to things I've already stated. I think I've answered the question, that the board's got a new focus, a reorientation, to promote health and safety and prevent injuries in the workplace.

**Mr Christopherson:** I'm not going to let you off the hook on this, because it's just so crucial. I right now have a moment to put this government on the line through you, as the parliamentary assistant. When you make the claim that workplaces are going to get safer, what are you doing in this law to make it safer? You talk about the Workplace Health and Safety Agency and what you're doing. The reality is, it was made an independent agency because it didn't do its job for 50 years. The reality is, you didn't like the fact that workers had half the seats on that agency, because you've already taken away half the seats on the board that we gave injured workers under our reform to the compensation. So it's an ideological thing. That's the point here. That's why you can't say anything concrete about how this makes a safer workplace, because it's not there.

That's not what this is about. It's about denying injured workers' claims, this is about giving money back to your corporate pals, and it's about watering down the rights of injured workers, just like every other bloody piece of legislation you've passed in this place.

*Interruption.*

**The Chair:** Order, please. Sir, order. There are a great number of amendments to go through that require thought

and consideration, and we have to be able to hear. I ask for your cooperation in this regard. Mr O'Toole, please.

**Mr John O'Toole (Durham East):** I just want members to be reminded that the minister is taking action, and I'll respond to a press release dated June 18:

"The ministry has hired 20 more health and safety inspectors last fall, and will hire an additional 26 this fall.

"In the fiscal year 1996-97 performed 39% more health and safety inspections of the workplaces than in 1994-95...."

That's a 40% increase in inspection. Inspection and prevention and early intervention is in fact the thrust of this bill. That is a change, a philosophical difference. There is more information with respect to the incidence and the investigations. Indeed I could refer you to the enforcement campaign in the Windsor area, where more than 800 orders were issued under the Occupational Health and Safety Act following a recent Ministry of Labour drive to target Windsor area manufacturing companies.

I could go on, but the evidence and the information is not, Mr Christopherson, referenced in the bill except in the overarching change in the methodology and philosophy. I challenge you that the 39% increase not only in the front-line inspectors but in the enforcement of orders is evidence in my mind that the board has got the message, and the change, I believe, is a direct result of the intervention of this minister.

**Mr Christopherson:** Can I respond? He mentioned my name. I'd like to respond.

**The Chair:** Yes, Mr Christopherson. Mr Maves, we'll go to Mr Christopherson.

**Mr Christopherson:** Since you're again willing to wade into these waters, I'll ask you. This is your chance to become a parliamentary assistant. You tell me what the hell is in Bill 99, in law concretely. Never mind the rest of the spin, John. What's in 99? Because I can point out to you, and will throughout these hearings, where you're taking away injured workers' rights. We can prove it. It's here. You tell me concretely what's in this bill that's going to make workplaces safer because you're forcing employers to do something different. What's in here?

**Mr O'Toole:** Well, I could refer —

**The Chair:** Excuse me, Mr Christopherson. No, order, please.

**Mr O'Toole:** This isn't a debate. I recognize that.

**The Chair:** I ask that you please direct your questions through the Chair.

**Mr Christopherson:** Through you, I ask that.

**The Chair:** Mr Maves.

**Mr Maves:** Of course, as I said before, you don't put dollar amounts and so on in bills. You don't say we are going to increase inspections by 50% in bills. Those are usually operational policies. Mr O'Toole talked about the fact that inspections in workplaces had gone up by 40-odd per cent. The actual numbers are in for the past fiscal year and they actually increased by 51%. So I did want to correct the record on that. Some 120 convictions were

obtained, resulting in total fines of \$2.3 million, which is also a large increase, better than 40%.

Again, I wanted to say that the main answer to this is that the board has a reorientation and a new focus on promoting public awareness of occupational health and safety, on educating employers, on fostering commitment to occupational health and safety. It is going to be an umbrella look after developing standards for the accreditation of employers who adopt health and safety policies and operate successful health and safety programs.

I know Mr Christopherson feels they are just words, but two of the concrete things we talked about were increased money for occupational health research, and Mr O'Toole has pointed out the increase in inspections already. I would say the ministry and WCB have already set a target for a 30% reduction in lost-time injuries, which is a commendable goal.

**Mr Christopherson:** The parliamentary assistant keeps raising new issues under this, so I consider it fair game. You talk about new money into research. Then why the hell are you shutting down and folding up the Occupational Disease Panel, with a proven track record? Everybody who came out, other than a few key employer groups which you are listening to, like the Ontario Mining Association, has said "Keep it." Experts from around the world have said, "Keep it." If you really cared about preventing diseases and illness, why are you killing the very body that has a world-renowned reputation for identifying where and when illness and disease is caused in the workplace?

On top of that, while you are thinking about that, earlier one of your colleagues talked workplace prevention and training. Then why are you cutting so much money from the worker training centres? Why are they having to lay off staff? Why are they being cut back so much? Is it because they are run by workers for workers? Does that not fit your ideological theme of how the world ought to work?

**Mr Maves:** Actually, funding has remained constant since 1995.

**Mr Christopherson:** There have been some cuts to those centres. Are you making a commitment now that permanent funding is going to continue?

**Mr Maves:** You've said it has been cut. I am correcting you that it has been kept at 1995 levels.

With regard to the Occupational Disease Panel, again this is refocusing the board to have responsibility for occupational disease research. They have already set up a task force on research which includes the Ministry of Labour, WCB, Institute for Work and Health and university researchers, and they have already begun the process of developing research strategies. Their goal is to advise on the development of a comprehensive, integrated provincial research strategy in workplace injury, illness and compensation. This is something that is already ongoing. The research agenda is to cover a broad spectrum of topics, including occupational disease; ergonomics and job design; epidemiology; diagnosis, treatment, and compen-

sation of workplace injuries and illnesses; and best practices in return-to-work and health and safety management.

**Mr Richard Patten (Ottawa Centre):** Just on that issue, if that's all happening now without this bill having gone through, then why change it?

**Mr Maves:** As we announced, the increased amount of money that is going to be available for this research is going to be found through savings from the board, and some of that is through efficiencies that are found by bringing occupational disease into the board.

**Mr Patten:** You had overwhelming evidence and testimony through the hearings and in writing that led to the acknowledgement of the fine work of the panel.

So that everybody knows, the panel wasn't running off on its own. It did make recommendations for the areas to research that were of import, and they had to justify the reason for their particular area of study. The results were quite phenomenal. It saved the province millions, if not hundreds of millions, of dollars and saved a lot of lives into the bargain.

With all of that testimony, was there anybody who recommended the recommendations that you are putting forward?

**Mr Maves:** Yes, I think there were several people who did say that in their briefs.

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**Mr Patten:** The only two were the Ontario Mining Association and Inco — maybe Falconbridge — as far as I can recall. There were no others that I can recall. In fact, they proposed that it remain with the degree of independence that it has now. And we know why Falconbridge has —

**Mr Maves:** I think there were some others beyond those two.

**Mr Christopherson:** I want to suggest to the parliamentary assistant that when he talks about money being stable since 1995, he is doing that because it's my understanding that immediately after the election, you cut the funding to the workers' health and safety centres and the health and safety delivery organizations and then stabilized it at that rate. The amount of money that was being provided before the election was lowered after the election.

**Mr Maves:** That's not my understanding.

**Mr Christopherson:** All right. We'll check that and talk about it at the next meeting. I'll come back to you on that one.

But I still want to leave it with you that you are not getting it. You're just not getting it. The things that you're doing are exactly the things that were put in place, in terms of removing them from the responsibility of the WCB, because they weren't being done.

The Occupational Disease Panel was struck because the job wasn't being done the way it ought to be. The independence of it is what made it so unique. That's what gave it the credibility around the world. I have read to you the letters in the House from experts — not partisans, not employers or employees or their representatives, but academics, scientists, other people who couldn't care less



about the politics we deal with but who only care about workplace disease and illness. They are the ones who said: "Don't kill it. Don't kill the independence. Don't put it back in."

The same with the Workplace Health and Safety Agency. The reason it was made an independent agency was because for 50 years the board wasn't doing the job, so that responsibility was taken out and it was set up as an independent entity.

What we are trying to get through to you and the government is that you're not fixing anything by doing this. You're taking us back to the dark days when the job wasn't being done. You're killing the very tools that were finally starting to have an impact. That's what you're doing, and you don't seem to get it.

**Mr Maves:** Again, as I said, one of the main ideas is to bring to the research and some coordination of the research into the board. There is a reduction in duplication of governance which provides some savings that can go back into research. In the announcement, we talked about a focus on enlisting existing expertise through different universities and others that are out there. It is just a better coordination of the research with what the board is finding on a day-to-day basis.

**Mr Christopherson:** Let's get the picture straight here. Let's go back to Bill 15. In Bill 15 you denied workers the 50% of the seats on the board that we gave them, which quite frankly they were decades overdue in getting. If you accept the fact that the historic compromise of 1914-15 can only be properly reflected if you give half the seats on the board of directors to employers and their representatives and to workers and their representatives, then you have to believe that the idea of an independent agency with a 50-50 split and an independent Occupational Disease Panel enhances their work.

What you've done with Bill 15 is you've eliminated those worker representatives. You fired the labour reps that were on there. Now you are going to load it up with your pals. You're going to talk about stakeholders; I know it. Just save your breath. The fact of the matter is, they're all going to be linked to employers, employer groups, Mike Harris, the Common Sense Revolution and the whole right-wing ideology. They're now going to be a majority on the board.

The board will now decide what studies will be done, which used to be decided by an independent Occupational Disease Panel, and they'll decide what kind of training ultimately is going to be done, that used to be decided by the Workplace Health and Safety Agency. By eliminating these things, eliminating the workers off the board and giving yourself control of the WCB, you effectively kill any real progressive changes in the prevention of workplace health and safety disease. That's what you're doing. You want to deny it. You can deny it until you're blue in the face but that's exactly what you're doing and that will be the end result.

So don't give me any hogwash about all this new research that's going to happen and you're working with universities. All that was being done. In fact, it was being

done so well you're going to kill it. That's why you're going to kill it: because you want to take care of your employer friends, the very people who now have control of the WCB and will make every decision that affects injured workers and preventing new injured workers. That's your agenda, that's what's going on here.

*Interruption.*

**The Chair:** Order, please.

**Mr Patten:** I'd like to address one of the points the parliamentary assistant gave as a rationale for why you would fold in the panel. I would agree with my colleague David Christopherson in terms of his arguments.

Fundamentally the panel is saying, and they've been supported by other scientific bodies, that they want the nature of their research to be based upon scientific data and scientific information and not on the basis of political choices; that it's actually based on data and for that they need some independence.

You said that this was going to be done in order to coordinate research that may be done elsewhere, to not duplicate or that kind of thing. Anybody who knows anything about scientific research knows that the very first thing you do in making your case to propose a research project is a literature search, and you study it, because that's the very first question that's going to be asked of you if you're proposing a research project. You're asked, and you say, there may be some correlative research, there may be some that relates to the body of research you want to do and there may be some supportive indications. You gather all of that and that's part of your presentation. I believe that's what — I'm sorry, I'm sure you can't listen to two people at the same time.

**Mr Maves:** Go ahead.

**Mr Patten:** That's what is done now. The panel proposes to the board, but it's based on scientific foundations. It's not based on trying to support a particular owner of a mining company or something of that nature. It's based upon researching possible diseases or possible threats to the safety and health of workers. That's their job and they are internationally renowned for that. The depositions have come forward overwhelmingly to support the independence — a degree of independence, because they're not totally independent now.

*Interruption.*

**The Chair:** Order, please.

**Mr Maves:** Again, we've touched on a lot of issues outside the motion. I guess I would say Ontario is the only jurisdiction which has an independent agency devoted to occupational disease. Other provinces conduct and fund research through their respective WCBs and we're doing that.

As I've said several times now, we remain committed to occupational disease research. We've made that commitment public and we're doing more. We've committed to prevention of injuries and can show that by the amount of inspections that have occurred in the workplace. It is not our agenda whatsoever to do less research. We're clear that we want to do more. I guess no matter how much I try to convince the members opposite that our

agenda is not what they espouse it to be, I won't be able to convince them.

**The Chair:** In an attempt to be quite fair about this, we have had a fair amount of discussion on this particular motion. I sense there's disagreement. Through further discussion will we come to agreement? I suspect not. Do we continue with further discussion?

1630

**Mr Christopherson:** No. The fact that we disagree with them doesn't mean I'm going to shut up. Unless the rules prohibit me from speaking further to this motion, I'm asking for the floor again.

**The Chair:** I'm just mindful that we have a number of amendments to speak to and to discuss.

**Mr Christopherson:** We've got a number of things we want to talk about too. The fact of the matter is, at the end of the day this bully government's going to use its majority here in this committee and in the House to ram through whatever the hell it wants. We've got very little opportunity to say our piece, but this is one of them.

You mentioned the fact that this is the only province that has an independent Occupational Disease Panel. I would say to you, we were also, to the best of my knowledge, the only province that had an employee wage protection plan, which you're killing under Bill 136 after you took a stab at it in Bill 7. Let me ask you, why do you feel it necessary to take this province to the lowest common denominator? What happened to the days when, as the largest province both by population and economic strength, we used to lead the way? Everybody else looked to Ontario to see what could be done and how it's been done in a way that's effective.

My question to you is, why do you think it's okay to take away these rights and to kill this panel just because we're the only ones who do it? Why don't you look at it the other way around and stand up and be proud of the fact that we're a province that has international support and credibility for the work done here at the Occupational Disease Panel? Why do you insist on racing us to the bottom in terms of all the standards that affect workers?

**Mr Maves:** I didn't say that was the reason we were doing it; I said that was an additional reason why we're folding responsibility for the Occupational Disease Panel into the board, for research. That was just another comment I made, a rationale for doing it. I take exception; I think Ontario now more than ever in the past is leading the rest of North America in job creation and economic growth. I hardly think that is a race to the bottom, which is maybe where we were headed a few years ago.

**Mr Christopherson:** That's a lot of nonsense. Go talk to the youth of this province and ask them where their jobs are, where their future is. Ask any of the people here who have young people. Ask some injured workers who were looking to you to keep your word when you said you were going to improve things under Bill 99. Instead, you attacked everything they have. That's what's going on.

I want to ask you another question about the Occupational Disease Panel. Obviously, I was a parliamentary assistant before I became a minister, the same as you are

one now, and I had to do a lot of study of why things came to be. Why do you think the Occupational Disease Panel was created from the responsibility of the WCB? Why do you think it was taken out and created in the first place? If it's such a lousy idea that you want to change now, why do you think it was done in the first place?

*Interjection.*

**Mr Christopherson:** Yes, by a Conservative government.

*Interruption.*

**The Chair:** Order, please.

*Interruption.*

**The Chair:** Ladies and gentlemen, I would remind you that you're in a committee of the Legislature of the province of Ontario. Kindly have regard for the institution. Please allow people to conduct their business.

*Interruption.*

**The Chair:** Madam, if you wish to stay, please follow the rules.

Mr Maves, did you wish to respond?

**Mr Maves:** At the time, occupational disease research was an area of changing technology. Knowledge in the medical field was expanding and they thought they needed more research in that area, so they established the panel to do that. We don't disagree that there needs to be more research; in fact we've said we're going to make sure there is more research continued; it's just going to be within the board and it's going to be coordinated.

**Mr Christopherson:** Why don't you believe in the independence of this panel? Why do you think that's such a bad thing, when that's one of the things that people around the world hold up as an example of the way it ought to be?

**Mr Maves:** I guess we believe, like other governments across the country, that it can be done in a coordinated approach within the board, as the board takes on the role of being responsible for education and prevention.

**Mr Christopherson:** Do you realize how idiotic that answer is overall?

**The Chair:** Mr Christopherson, I don't think that's parliamentary. Could you withdraw it?

**Mr Christopherson:** I withdraw the unparliamentary remark. Back to an earlier question — we got a little sidetracked — you still didn't tell me why you've taken "worker" and "compensation" out of the name.

**Mr Maves:** As I said —

**Mr Christopherson:** No, you've told me why you want to change the name. I want to know why your new name doesn't include "workers" and "compensation."

**Mr Maves:** The change in the name is to reflect the new focus of the board.

**Mr Christopherson:** And how much is it going to cost to change the name?

*Interruption.*

**The Chair:** Order, please. Excuse me, if the outbursts continue, I'll be forced to call a recess.

**Mr Christopherson:** Chair, perhaps we could get the minister in and things would go more quickly. The parliamentary assistant obviously doesn't have all the answers.



Maybe we need to bring in Minister Witmer and let her answer these questions.

**The Chair:** I hardly think that's possible at this short notice. We can certainly make that request.

*Interruption.*

**Mr Christopherson:** I would like to request — the parliamentary assistant obviously is having some trouble with details. Let's get the minister in here —

*Interruption.*

**The Chair:** Excuse me, I cannot hear. I'm sorry, Mr Christopherson. Please, I would like to hear you.

**Mr Christopherson:** The parliamentary assistant is not the minister, in fairness. We are entitled to answers, prompt answers, thorough answers, accurate answers. If they're causing that much trouble for the parliamentary assistant, I'd like to request that this committee call on the minister to be here and account for herself in person.

**Mr Maves:** Mr Christopherson has asked the same question several times. I've given him an answer that he obviously disagrees with. When I confer with people at the table, I'm trying to see if they can come up with an answer that — maybe I'm leaving something out — will satisfy Mr Christopherson. But as I said about 25 minutes ago, I don't think there's anything I'm going to say today or probably any other day that's going to satisfy Mr Christopherson.

He's also jumping around on quite a few issues. We've not just spoken about the amendment; we've spoken about a whole bunch of different things. It requires me to refer to my notes and talk about different issues all the time. If we were focused on the amendment, it might be a lot easier.

Again, I give the same answer; I know that he doesn't like that answer or want to discuss that answer, and that's fine. But I have been giving the same answer most of the time.

**The Chair:** I think Mr Maves is telling you he feels he has answered the question to the best of his ability, Mr Christopherson.

**Mr Christopherson:** With respect, I can appreciate having to consult with notes and experts. I don't have a problem with that at all. It's just that it seemed to be happening so often. These are political decisions made at the cabinet table. You're not there and neither are your colleagues. We know how the system works. The minister's the one who accounts — as long as they're colleagues. That wasn't meant to be a slight against you. It was more to point out the fact that these things are ideological, they're not technical.

**Mr Maves:** The minister has given the same answers that I would give.

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**Mr Christopherson:** I still didn't hear the answer. What is the answer? This is your story, if I've got it right: You want to change the name because you are reorienting a whole bunch of stuff. So you want to create a new name. My question to you is, if you felt so compelled to change the name, why did you drop the words "workers" and "compensation," when that is at the very heart of why and how the WCB came to be?

**Mr Maves:** I think the new name, "workplace safety," is very relevant to the new focus of the board and the purpose of the act, of promoting safety in the workplace. Who is workplace safety for workers? I don't think talking about workplace safety is a negative on workers.

**Mr Christopherson:** Why do you use the word "insurance" instead of "compensation"? "Compensation" was specifically and deliberately used when the historic compromise was made, when the report was written, as I recall. "Compensation" was clearly the word, and it has a different connotation from "insurance." Why do you feel compelled to exchange the word "compensation" for "insurance"? It wouldn't have anything to do with privatization, would it?

**Mr Maves:** No. If the government were intent on privatizing, I don't know why we would have brought in the bill. We wouldn't have gone through the entire process of bringing in the bill if we were going to privatize the system. That's clearly not our intention. Even Minister Jackson, in his report, said that he didn't believe in privatizing the system.

*Interruption.*

**The Chair:** Order, please.

**Mr Christopherson:** I want to say to you, Parliamentary Assistant, I think the reason you put "insurance" in there is this is meant to be a two- or three-step process and at the end of the day your friends in the insurance industry will control and be making a profit on WCB. Everybody in this room knows that's what your agenda is and that's why you made the word change.

**The Chair:** Mr Maves, I just want to indicate to you and remind you that if you wish any of the staff to answer any question for you, that is perfectly all right as well.

**Mr Maves:** I understand that, but I think I have answered the question the same way several times. If staff at any time needs to try it themselves, they can, but I don't think that —

**Mr Christopherson:** All you've got is the mantra. All you've got is the spin, the phrases that are there on the sheets. The reality is you can't answer those kinds of pointed questions because at the end of the day it would point out that all of your spin-doctoring is just that and that there really is a right-wing employer agenda at play and you're just their handmaiden, you're just carrying this out for them.

I want to ask you about the name change. Is it true that the cost of the name change is \$1 million?

**Mr Maves:** I don't have those numbers.

**Ms Marguerite Rappolt:** That is the estimate given to us by the board. I can't tell you all the assumptions that it's based on. That's a rough estimate we have been given, yes.

**Mr Christopherson:** Thank you. Parliamentary Assistant, let me ask you then, if it costs \$1 million, given the needs of injured workers, given the concern and emphasis that you have placed on the unfunded liability, do you really think you can justify that the most important place to spend \$1 million is a new name?

**Mr Maves:** I guess in my opinion the reorientation is safety and prevention of workplace injuries, and if we can reduce workplace injuries by 30% and if "workplace safety" helps with everyone understanding that new focus on prevention, then yes, it would be worth \$1 million.

**Mr Christopherson:** Do you think it's more important than perhaps putting that money into more research? You talk so much about research. Do you think it's more important to change the name than to put \$1 million into a research project?

**Mr Maves:** I just answered that question.

**Mr Christopherson:** You think that's more important, more than —

**Mr Maves:** If it helps prevent workplace injuries, it's important.

**Mr Christopherson:** How is the name going to help do that?

**Mr Maves:** If people understand within the system the need for prevention, the need for more focus on prevention and education and it prevents injuries, and that's part of the change and the refocus, then yes, I think it's worth it.

**Mr Christopherson:** I don't understand why that would require a name change. That's what the Workplace Health and Safety Agency was doing. That was their mandate, to do just that. The Occupational Disease Panel was carrying out its functions along that line, and better than you're going to. That does not in any way justify spending \$1 million on a name change, especially when that name change doesn't include the word "workers" or "compensation."

**Mr Maves:** It includes "workplace safety," which we think is very relevant.

**Mr Christopherson:** That's the best you've got?

**Mr Maves:** I gave you the answer twice already.

**Mr Christopherson:** It almost pains me to have to do this to an individual, but it's that your answers don't hold up when one gets a chance to push you on them, when it's not just the minister standing up in the House and giving a one-minute response and sitting down, or running away from a scrum when she is being pushed on it. You're showing very clearly for everybody here and anybody who reads the Hansard that you cannot justify the changes you're making along the lines that you say. Your words are one thing and your actions are another, and the name change and \$1 million wasted on a name change is just evidence of that exact fact.

*Interruption.*

**The Chair:** Order, please.

**Mr Maves:** I could probably look back and find things that your government changed, name changes, caused changes in costs, or building some new buildings that cost millions and millions of dollars that maybe could have been used somewhere else too. You can go back and forth forever about that.

**Mr Christopherson:** We can, but it doesn't go away. The Hansard is there. I am prepared to stand by my argument up against the lame excuse that you have to deliver here on behalf of the government any day you want and anywhere you want.

Let me ask you another question: What is the cost of the Occupational Disease Panel, since you have raised that? What is the annual budget? Maybe your staff can assist.

**Mr Maves:** It's \$1 million right now.

**Mr Christopherson:** It's \$1 million, and what was the cost of the name change?

**Mr Maves:** It's \$1 million, but we're spending more money on —

**Mr Christopherson:** So the \$1 million you are spending on the name change would keep the Occupational Disease Panel going for a full year or it would allow them, for 12 months, to arguably double the output in terms of research they are doing. You make like \$1 million doesn't matter much in a name change, but then you talk about the fact that the independence of the Occupational Disease Panel has to be killed because it's so valuable to save this \$1 million. It doesn't square.

**Mr Maves:** I've given you my answer several times.

Marg, did you want to try?

**Ms Rappolt:** I was just going to confirm that the parliamentary assistant had noted that the \$1 million on occupational disease research will continue to be spent. It's part of the base research funding that the board is committed to, and the minister has suggested there will be an additional \$7 million allocated towards health and safety and compensation research. Just to be clear, the \$1 million associated with the panel is predominantly a research base which will be continued under the board's research strategy.

**Mr Christopherson:** One of the key benefits of the Occupational Disease Panel is its independence, the fact that it's independent. Who will make the decisions now about what research projects go or do not go? Who, or what entity, at the end of the day makes that decision, instead of an independent body at arm's length from all politics?

**Ms Rappolt:** The Workers' Compensation Board is now developing its comprehensive research strategy. One element of that is to have increased stakeholder involvement in the setting of the research agenda. They have not, to my knowledge, released publicly details of the research strategy, but the minister did release some information on the basic parameters of that strategy during the public hearings process in June.

**Mr Christopherson:** I'd like to know from the parliamentary assistant how that's better than what we have now. How is that better, since you claim everything you are doing is to make it better, that you have to start over with your research strategy and your terms of reference and input from stakeholders, when you have already got an independent Occupational Disease Panel that's world renowned?

**Mr Maves:** I think I have answered that several times already.

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**Mr Christopherson:** No, I've asked you why you think it's going to be better. Why is it better to have to redo all the work and have the board of directors, which is



now loaded up with your cronies, making the decisions rather than an independent group, particularly when it was a former Tory government that brought out the concept in the first place?

**Mr Maves:** Again, it's a reorientation of the main focus of the board and the functions and the purpose of the board. The board can better coordinate the research and education with control of the different agencies.

**Mr Patten:** The committee had requested that legislative research request a copy of the document that was identified by the United Steelworkers of America in Sudbury which contained reference to over 1,500 letters or other forms of writing in support for the panel. The committee, as far as I know — I haven't seen it — has yet to receive that information from the minister's office. How come it takes so long to get copies of some of those letters that were written, and that the committee hasn't been able to do that? I think just the volume alone, never mind the source, has to tell you something, let alone the testimony that was very strong throughout almost everywhere we went in terms of that panel. How come we haven't yet received any information from the minister's office on that?

**Ms Rappolt:** I'll commit to get back on that. I know certainly through the minister's office we had looked into that information, so if it has not come through to the Chair, we will ensure that happens prior to the next day of clause-by-clause review.

**The Chair:** Will you send it to the clerk, please.

**Mr Patten:** This affects how we perceive addressing amendments to the bill, presumably for everybody. I think every member who would see the volume and the source and the content of some of these letters — it may, I say "may," sway their judgement about the importance of the independence of this particular panel when they see the credibility of the sources. When we proceed so quickly, we have extreme difficulty. We only had about four days to put together our amendments, which is not easy. We don't have the same resources in the opposition as you have as the government side, that's for sure. You need to base your judgements and your amendments on hearings, on testimony, on depositions, on scientific data etc.

I'm not happy with that and I fail to see why we're not able to get that kind of information, which is germane to the particular issue we're talking about right now.

**Ms Rappolt:** We'll get that information as soon as we can.

**Mr Christopherson:** Further on the independence issue versus being the responsibility of the board, on June 23, I believe, in Toronto, we had hearings here and Nickie Carlan, who's the chair of the Occupational Disease Panel, made a presentation. I have a copy of the Hansard. She was asked:

"I guess it really makes one wonder what the WCB would do if they had the sole responsibility for occupational health and diseases.

"Ms Carlan: I think the answer is quite clear. They haven't done very much. In the annual report, which I have provided to you, there's a time line of the diseases that

were recognized prior to the inception of the Occupational Disease Panel and the WCB did virtually nothing for 70 years. Since 1985 there have been over 19 recommendations about diseases for which compensation should be payable and in the previous 50 years I think there were three conditions."

With that kind of track record, how can anyone make the claim that there will be more productivity in terms of research with the independence gone than the current stats would say?

**Ms Rappolt:** First of all, I'd note, as the parliamentary assistant has, that in the research strategy that the board is developing, it's committed to relying on independent, university-based centres of excellence for the conducting of research. There has been an announcement on their commitment to that approach to retain the credibility and independence. That is recognized as an integral factor.

In terms of your comment about the increase in occupational disease research, I think the government would say that's very applaudable and a commitment that they want to continue to focus on. They just want occupational disease research integrated into a more dedicated, comprehensive research strategy that doesn't just look at occupational disease research on its own but looks at it in the context of a much broader range of health and safety research, with a broader umbrella funding base, a funding base that will be up to \$13 million by the year 2000.

**Mr Christopherson:** I'm sorry, all the independent experts and evidence that we have suggests it's the independence of the panel that is so crucial to its success, and that's the part you're snuffing out. I would say to the parliamentary assistant, it's great that you're announcing more money into research. Why don't you take that money and put it into the Occupational Disease Panel and then no one would be able to criticize you. All you'd get is applause for finally doing something for injured workers instead of against them.

**Mr Maves:** Again, it's the same answer that I've given you several times.

**Mr Christopherson:** That doesn't make it acceptable.

**Mr Maves:** I understand that.

**Mr Christopherson:** So you're just going to shrug your shoulders. I don't know. I keep trying —

**Mr Maves:** I have to the same answers. We aren't even on the Occupational Disease Panel right now in the amendment, I might note.

**Mr Christopherson:** Well, you did raise it as part of your answer to the amendment that we're on.

**Mr Maves:** No. You raised it initially, as you did several other issues.

**Mr Christopherson:** But it's coming up again.

**Mr Maves:** I understand that.

**Mr Christopherson:** You'll get another round. Don't worry.

**The Chair:** Shall I put the question on this, the amendment on subsection 2(2)? All right. I call the question on the amendment on page 4. Shall the amendment carry? Recorded vote.

**Ayes**

Christopher, Hoy, Patten.

**Nays**

Fisher, Galt, Jordan, Maves, O'Toole, Ouellette, Stewart.

**The Chair:** The motion is lost.

*Interruption.*

**The Chair:** Order, please.

Moving now to the amendment, an NDP motion on page 5. Mr Christopherson, do you wish to speak to this?

**Mr Christopherson:** If I could for the record just point out that my colleague Shelley Martel was here but, as she's not a formal member of this committee, can't cast a vote. I can assure you, had she had one, she'd have been in favour of that amendment.

**The Chair:** Would you read out the amendment, please.

**Mr Christopherson:** I will. I move that subsection 2(4) of the bill be amended by striking out "Workplace Safety and Insurance Board" at the end and substituting "Workers' Compensation Board."

I would ask the parliamentary assistant, I would ask members of the committee to think about voting in favour of this. If you want to feel what it's like to have an injured worker say thank you, vote in favour of this and then we'll pass another motion that recommends the million dollars saved would be put into the budget of the Occupational Disease Panel. Why don't you do that and show these injured workers that you really do care and you're not just here following the dictates of what they told you out of the whip's and Premier's offices?

*Interruption.*

**The Chair:** Order, please.

**Mr Christopherson:** None of you are jumping, obviously. None of you, in my opinion and in my view, will ever have the legitimacy to say that you care about waste and fat in the system when you're prepared to spend a million dollars on a name change at a time when you say the unfunded liability is what's driving you to do these awful things. There's no justification.

**Mrs Barbara Fisher (Bruce):** Pathetic, David.

**Mr Christopherson:** Well, defend yourself. Take the mike. Come on. Don't heckle; debate me.

*Interruption.*

**The Chair:** Order, please.

**Mr Christopherson:** I'm ready, let's go.

**The Chair:** Mr Christopherson, kindly direct your comments through the Chair, please.

Further questions and comments? Seeing none, I call the vote then. Shall the amendment carry? Recorded vote. All those in favour?

**Ayes**

Christopherson, Hoy, Patten.

**The Chair:** All those opposed?

*Interruption.*

**The Chair:** Order.

**Nays**

Fisher, Galt, Jordan, Maves, O'Toole, Ouellette, Stewart.

**The Chair:** Order. The motion is lost.

Shall section 2 carry? All those in favour? Recorded vote.

**Ayes**

Fisher, Galt, Jordan, Maves, O'Toole, Ouellette, Stewart.

**Nays**

Christopherson, Hoy, Patten.

**The Chair:** Section 2 carries.

Now I think we can look at sections 3 through 8. Any questions or comments?

1700

**Mr Christopherson:** I'd like the parliamentary assistant to explain to us how this section is going to help injured workers.

**The Chair:** Specifically which section did you want to

**Mr Christopherson:** The whole section.

**The Chair:** I suggested sections 3 through 8, since no amendments were tabled on those sections.

**Mr Christopherson:** Right, and I'm asking — you said section 3, correct?

**The Chair:** Sections 3 through 8.

**Mr Christopherson:** I realize that. Then as part of this overall, I'm asking what the benefit to injured workers is as a result of section 3. What does section 3 do for injured workers?

**Mr Maves:** Sections 3 through 8 are all just consequential amendments to reflect the change in the name of the legislation from the Workers' Compensation Act to the Workplace Safety and Insurance Act.

**Mr Christopherson:** So this is all just part of the million-dollar waste.

**Mr Maves:** This is part of making sure that the act complies with other acts that mention the Workers' Compensation Board or act.

**Mr Christopherson:** That's part of the million dollars, though.

**Ms Rappolt:** If I may, the consequential amendment reflects the change in the name of the act, the legislation, just as any piece of legislation passed by any government would also have consequential amendments.

**Mr Christopherson:** I understand that. But I also understand that you then have to give effect to the law that we pass, which means you've got to go back, and if you don't actually change the laws, you've got to provide the legal reference that shows that the names have been



changed. That takes legal time, which has absolutely nothing to do with injured workers. My only point was that passing this section is part of the million dollars that it costs to change the name.

**Mr Maves:** Any time you change legislation, you change other pieces of legislation if that legislation refers to other pieces of legislation. This is no different.

**Mr Christopherson:** I understand, but you're having to change some pieces of legislation just because you changed the name. There are other things you'd have to change if you had only amendments, but the fact that you changed the name means anywhere in government where "Workers' Compensation Board" appears, you've got to make a legal change to it. That's part of the million dollars you're wasting.

**Mr Maves:** That's correct.

**The Chair:** Further questions or comments? Seeing none, shall sections 3 through 8 carry? Recorded vote.

### Ayes

Fisher, Galt, Jordan, Maves, O'Toole, Ouellette, Stewart.

### Nays

Christopherson, Hoy, Patten.

**The Chair:** The sections carry.

Moving then to section 9, page 6. This is a government amendment. Mr Maves.

**Mr Maves:** I move that subsection 9(2) of the bill be amended by striking out "subsection 30(6)" in the second-last line and substituting "subsection 29(10)".

The amendment simply corrects a drafting error which inadvertently substituted subsection 30(6) for subsection 29(10), which is the correct reference.

**Mr Christopherson:** Just for clarification, what you're doing is fixing a mistake that you made in the bill.

**Mr Maves:** That's right.

**Mr Christopherson:** The bill that you didn't have any input from anybody on in the first place. Your perfect little piece of legislation, you've already got to fix it.

**Mr Maves:** In almost every single piece of legislation I've ever been involved with there are drafting errors, there are translation errors. This was one of the drafting errors.

**Mr Christopherson:** I think it's fair to say that if other people besides your pals had had a chance to see this, some of the mistakes may have been caught. No guarantee, but you certainly deny one more opportunity for corrections to be noted when you only share it with your friends and then drop it upon the world.

**Mr Maves:** I think any stakeholder would see the legislation, once it was drafted, when it's introduced, not before.

**The Chair:** Further questions and comments? Seeing none, I put the question. Shall this amendment carry? Recorded vote.

### Ayes

Fisher, Galt, Jordan, Maves, O'Toole, Ouellette, Stewart.

### Nays

Christopherson, Hoy, Patten.

**The Chair:** The motion is carried.

Moving now to the amendment on page 7, this is also a government amendment.

**Mr Maves:** I move that section 9 of the bill be amended by adding the following subsections:

"(4) Subsection 267.8(15) of the act is amended by striking out 'Workers' Compensation Act' in the third line and substituting 'Workplace Safety and Insurance Act, 1997.'

"(5) Subsection 267.8(16) of the act is repealed.

"(6) Subsection 267.8(19) of the act is amended by striking out 'Workers' Compensation Board' in the first line and in the fourth and fifth lines and substituting, in each instance, 'Workplace Safety and Insurance Board.'"

Again, this is a consequential amendment to the Insurance Act to reflect the change of the name of the board in the act and it repeals subsection 267.8(16) of the Insurance Act. This provision is no longer necessary because the board will be permitted to include the value of any collateral benefits that have been or will be received by the worker in the amount of the worker's judgement or settlement.

**Mr Christopherson:** Subsection (5) says, "Subsection 267.8(16) of the act is repealed." I don't know whether that is what you were referring to, but even if you were, would you say it in plainer English, please?

**The Chair:** Do you want a —

**Mr Christopherson:** I just want an explanation of what it is, and if he says, "I just explained it," then I need him to explain it in language I can understand.

**The Chair:** Which would mean 267.8(16). Do you want that read out?

**Mr Christopherson:** No. I want to know from him what it means. It is being repealed. You're repealing that subsection. To cut through it, I just want to know what it is you're doing here.

**Mr Maves:** We're making this in harmony with Bill 59, the Insurance Act, which is there to prevent double recovery by a worker in a tort action.

**Mr Christopherson:** How does that change from what we have now?

**Mr Maves:** I believe this is because — and Stan, you might want to help with this — of the changes that were made under Bill 59.

**Mr Stan Bucci:** If I could add something, there is a motion to amend subsection 29(11), number 57 on your list. The two motions harmonize the operation of the Insurance Act with workers' compensation. It's a long-standing rule that a person who is entitled to benefits should not collect from multiple sources for the same injury. This rule already exists in the Insurance Act, and

because of Bill 59 changes to the Insurance Act, there is a change required to Workers' Compensation Act to continue this harmonization, and that is 29(11). As a result, the section which prohibits double recovery in the Insurance Act is not necessary, and that is what 267.8 refers to.

**Mr Christopherson:** Does it affect anything in terms of the income of an injured worker, any of the claims, anything at all, or is it putting any new restrictions?

**Mr Bucci:** No, it does not.

**Mr Christopherson:** When you say you are just harmonizing, have we moved the line at all?

**Mr Bucci:** Not to my knowledge. It simply permits collateral sources to be taken into account by the board in determining if any additional benefits are going to be paid to workers who have a right of action when they come back to the board for potential differences.

**Mr Christopherson:** What do they do now? How does it differ? That is what I am not clear on.

**Mr Bucci:** I think it works the same way except that the provision is in 267.8 of the Insurance Act. Because of the changes in the Insurance Act, Bill 59, a lot of the provisions were repealed, and this is one that should have been repealed.

**Mr Christopherson:** It should have been or should not?

**Mr Bucci:** That's my understanding, that it should have been repealed, yes.

**Mr Christopherson:** Oh, when you did Bill 59 you should have made the reference to WCB?

**Mr Bucci:** Yes.

**Mr Christopherson:** Another Tory mistake.

**Mr Bucci:** I didn't do Bill 59.

**The Chair:** Further questions or comments? Seeing none, I'll put the question. Shall the amendment carry? Recorded vote.

#### Ayes

Fisher, Galt, Jordan, Maves, O'Toole, Ouellette, Stewart.

#### Nays

Christopherson, Hoy, Patten.

**The Chair:** Section 9, as amended, carries.

Moving now to sections 10 through 17. Questions or comments, please.

1710

**Mr Christopherson:** Again, an explanation by the parliamentary assistant as to what these sections do.

**Mr Maves:** I'm sorry, Chair. Are we on section 10?

**The Chair:** It was section 10 through 17, inclusive. Are you asking about one specific section, Mr Christopherson?

**Mr Christopherson:** You can start right at the first section.

**The Chair:** Section 10.

**Mr Maves:** The same consequential amendments as affect the Legislative Assembly Act reflect a change. That is 10(1), and 10(2) is a consequential amendment that affects the Legislative Assembly Act and reflects a change in the name of the legislation. And 11.

**Mr Christopherson:** Wait a minute. Again, 10 is a result of the \$1 million wasted on the name change.

**Mr Maves:** It's a result of bringing in a new piece of legislation and having to change other acts to make them conform.

**Mr Christopherson:** But it's reflecting the name change. It's not just consequential in terms of clause, subclause. If you brought in amendments to the Workers' Compensation Act that didn't include changing the name, some of these amendments wouldn't have to be made because the reference they're changing is the name of the act. Is that correct?

**Mr Maves:** That's correct.

**Mr Christopherson:** So it is part of the \$1 million you are wasting.

**Mr Maves:** Yes.

**Mr Christopherson:** You're actually getting clearer in your thinking. You've now admitted twice it's wasted money.

**The Chair:** Further questions and comments? Seeing none, I put the question. Shall sections 10 through 17 carry? All those in favour?

**Mr Christopherson:** Wait a minute. That was section 10. Now I want to hear about 11.

**The Chair:** Okay.

**Mr Maves:** It's the same one, Madam Chair. Change consequential to the Municipality of Metropolitan Toronto Act, reflects a change in the name of the legislation from Workers' Compensation Act to Workplace Safety Insurance Act.

**Mr Christopherson:** That's part of the wasted \$1 million too?

**Mr Maves:** Part of changing the act, yes.

**Mr Christopherson:** And 12?

**Mr Maves:** Yes, I just answered the question.

**Mr Christopherson:** I'd like you to refer to it.

**Mr Maves:** It's a consequential amendment as —

**Mr Christopherson:** What does it refer to? Come on, you can do this. I have a right to have a question. I'm asking what is section 12?

**Mr Maves:** I've answered.

**Mr Christopherson:** You're giving a generic answer. I'm asking what section 12 specifically changes.

**The Chair:** Please allow time for an answer.

**Mr Maves:** A consequential amendment, I'll say it again, as it affects the Municipality of Metropolitan Toronto Act to reflect a change in the name of a legislation from Workers' Compensation Act to Workplace Safety Insurance Act.

**Mr Christopherson:** I don't think so. Unless the compendium that was sent out is wrong, I think that's section 11. We're on section 12.

**Mr Maves:** No, we're on section 11 because you stopped and made me go back to 11.



**Mr Christopherson:** All right. Do 12.

**The Chair:** Order, please. For clarification: You are asking a question on section 11?

**Mr Christopherson:** I'd like each one. He already answered once about the municipality because section 10 was the Legislative Assembly Act.

**The Chair:** Okay. We're on 11.

**Mr Maves:** All right, now I answered the one on the Municipality of Metropolitan Toronto Act.

**Mr Christopherson:** Right. I heard that answer twice. But fine, 12.

**Mr Maves:** Chair, are we moving to section 12?

**The Chair:** Mr Christopherson, again I ask you to direct your questions through the Chair, and if you would do each one specifically, then we will have no confusion. My understanding is that you're asking for clarification on section 12.

**Mr Christopherson:** Yes. It comes right after 11.

**Mr Maves:** The change is the consequential effect on the Police Services Act to reflect the change in the name of the legislation from Workers' Compensation Act to Workplace Safety Insurance Act.

**Mr Christopherson:** Part of the \$1 million you are wasting.

**The Chair:** Section 13.

**Mr Christopherson:** Yes, 13 please. Every one of them.

**The Chair:** Same question, I believe, with regard to section 13, Mr Maves.

**Mr Maves:** Consequential amendment as it affects the Power Corporation Act to reflect the change in the name of the legislation from Workers' Compensation Act to Workplace Safety Insurance Act; and the new language of the bill, such as the change from "assessments" to "premiums."

**Mr Christopherson:** And 14 is the Proceedings against the Crown Act? That's the law that's changed?

**Mr Maves:** That's correct.

**Mr Christopherson:** And 15 would be the Regional Municipalities Act?

**Mr Maves:** That's correct.

**Mr Christopherson:** And 16 would be the Retail Sales Tax Act?

**Mr Maves:** That's correct.

**Mr Christopherson:** And 17 would be the War Veterans Burial Act?

**Mr Maves:** That's correct.

**Mr Christopherson:** And those changes are only necessary because you changed the name; there's no other part of the law that's a consequence of changing a procedure, a formula, any other reference. Every one of those costs is directly attributed to your changing the name.

**Mr Maves:** It's directly attributable to Bill 99.

**Mr Christopherson:** I've looked at these carefully, Parliamentary Assistant. I'm being very careful in what I ask. I'm asking you to confirm my understanding that all these changes are only necessary because you decided to change the name, not because you changed anything else.

If you hadn't changed the name of the Workers' Compensation Act, you wouldn't have to make these changes.

**Ms Sherry Cohen:** The Workers' Compensation Act is being repealed, and all subsequent amendments since the 1990 consolidation to the Workers' Compensation Act are also being repealed. The new act is being given a new name. But if it had been drafted just as a new act with the Workers' Compensation Act, these references wouldn't have had to be changed.

You have to understand that it isn't just the name of the act; it's also the repeal of the act. So this is the repeal of the act and a new name being given to the new act; it is necessary to change all references in existing laws to the new act.

**Mr Christopherson:** It underscores the fact that you aren't just making minor amendments that injured workers need to understand. You're replacing the entire act; in fact, you're making it longer than it was before.

**Ms Cohen:** We are replacing the act; it is a new act.

**Mr Christopherson:** A whole new act, not amendments.

**Ms Cohen:** No, it's an entirely new act.

**Mr Christopherson:** Just like the Ontario Labour Relations Act is a whole new act — not just amending Bill 40 and the issue of scabs. This is the same thing. You brought in a whole new piece of legislation.

**Mr Maves:** If the act was one page, I believe we'd still have to make the same consequential amendments to the other acts.

**Ms Cohen:** If you were simply introducing a new act and renaming the act, then you still would have to make the consequential amendments to other laws that refer to an old act that no longer is going to exist.

**Mr Christopherson:** What I want to do is underscore the fact that it is a whole new act — not just a few amendments here and there; it's a whole new act. Is it longer than the previous one?

**Ms Rappolt:** I'll just say that the proposed act adds a new section in duties and responsibilities for the board of directors, so there is in effect a new part, but there has been significant modernization and clarification in the redrafting.

**Mr Christopherson:** But you've made it a bigger piece of legislation.

**Ms Rappolt:** We can confirm for you that the proposed act has 180 sections; the existing Workers' Compensation Act has 164 sections.

**Mr Christopherson:** Let me get this straight. When you're dealing with environmental protection, you cut the laws and cut the regulations because you believe in cutting red tape and getting government out of the face of business, blah, blah, blah. But when it comes to injured workers, you increase the amount of legislation that controls them by virtue of denying them claims they otherwise would be entitled to. So you have one set of rules when you're dealing with your political agenda around the environment and a different set of rules when you deal with your political agenda around workers.

**Mr Maves:** There are new sections in this, for instance, the return-to-work obligations which weren't in there before. Part II, the injury and disease prevention, is a new part also.

**The Chair:** Further questions and comments? Seeing none, I then put the question. Shall sections 10 through 17, inclusive, carry?

#### Ayes

Galt, Jordan, Maves, O'Toole, Ouellette, Spina, Stewart.

#### Nays

Christopherson, Hoy, Patten.

**The Chair:** The sections carry.  
Moving to section 18, on the top —

*Interruption.*

**The Chair:** Madam, kindly respect the committee's attendance to business.

Moving to page 8, please, section 18. This is a government amendment.

1720

**Mr Maves:** I move that section 18 of the bill be amended by adding the following paragraph:

"10. Subsections 72(1) and (2) of the Family Responsibility and Support Arrears Enforcement Act, 1996."

**Ms Cohen:** The Family Responsibility and Support Arrears Enforcement Act contained two amendments: one to the Workers' Compensation Act and one to Bill 99 if and when it became law. That amendment deleted a reference to support responsibility officers to issue garnishment orders. The effect of that amendment was to leave the authority to issue garnishment orders in court. Because we have included those amendments in the government motions to Bill 99 in schedule A, we are repealing these sections in the Family Responsibility and Support Arrears Enforcement Act to be no longer necessary.

**Mr Christopherson:** This would of course be the infamous Attorney General's family support plan. That was your bungle of last year when you had literally tens of thousands, mostly women and children, who weren't receiving money, spouse support payments that spouses had already paid into the system. But because you shut down all the offices to help pay for your tax cut, all that money was backed up and never distributed. Would that be the same plan?

**Mr Joseph Spina (Brampton North):** It is not germane to the motion.

**Mr Maves:** My understanding is that more people right now are receiving payments than ever have before in the history of the support plan.

**Mr Christopherson:** Do you know how many people were put through the wringer as a result of what you guys did?

**The Chair:** We're dealing with the Workers' Compensation Act, please.

**Mr Christopherson:** You were told ahead of time that was going to happen to those women and children and you ignored it and did it anyway.

**The Chair:** Let's return to the act, please. Further questions and comments? Seeing none, I put the question. Shall the amendment carry?

#### Ayes

Jordan, Maves, O'Toole, Spina, Stewart.

#### Nays

Christopherson, Galt, Hoy, Ouellette, Patten.

**The Chair:** Mr Hastings, were you voting in favour of or opposed to this motion, or abstaining?

**Mr John Hastings (Etobicoke-Rexdale):** I'm abstaining because I wasn't here to vote on the amendment.

**The Chair:** Shall section 18, as amended, carry?  
Recorded vote, please.

#### Ayes

Galt, Hastings, Jordan, Maves, Ouellette, O'Toole, Spina, Stewart.

#### Nays

Christopherson, Hoy, Patten.

**The Chair:** Moving then to section 19, page 9, a government motion, please.

**Mr Maves:** I move that section 19 of the bill be struck out and the following substituted:

"Commencement

"19(1) This act, except for subsection 2(11), comes into force on January 1, 1998.

"Same

"(2) Subsection 2(11) shall be deemed to have come into force on April 1, 1997."

The amendment is a consequential change to reflect the expected new in-force date of the act, January 1, 1998, and clarifies that the amendment to section 22 of the Occupational Health and Safety Act, which removes the cap on the level of funding, comes into force on April 1, 1997.

**Mr Christopherson:** On the second question, would you just expand on that a little in terms of what that does?

**Mr Maves:** Currently the board collects moneys from employers to pay for administration of the Occupational Health and Safety Act. There's a cap on the amount of money they can collect, I believe it's \$4 million, and then there's a percentage increase that can occur each year. This removes that cap so that the board can collect the full amount from employers for administration of the Occupational Health and Safety Act.

**Mr Christopherson:** The change to the enforcement, what was the original enforcement date in the bill you tabled?



**Mr Maves:** July 1, 1997; now it's January 1, 1998.

**Mr Christopherson:** How did you think you were going to get the bill done in that length of time and still do public hearings when you originally tabled it? How were you going to do that?

**Mr Maves:** I would have to comment that it was the House leaders in negotiation with the ministry at the time. They had drafted it back in November and they picked that as the commencement date. I wasn't part of that process where they came up with that date or why they drafted that date.

**Mr Christopherson:** The fact was that you were going to try and ram it through even quicker than you are. The injured workers and the opposition in the House forced you to delay your dirty work, and that's the only reason we managed to stave off the implementation of this awful bill.

**Mr Maves:** That's your opinion.

**Mr Christopherson:** You're damn right it is.

**The Chair:** Further questions and comments? Seeing none, I put the question. Shall the amendment carry?

#### Ayes

Galt, Hastings, Jordan, Maves, Ouellette, O'Toole, Spina, Stewart.

#### Nays

Christopherson, Hoy, Patten.

**The Chair:** The motion carries.

Moving now to the amendment on page 10, this is an NDP motion.

**Mr Christopherson:** I move that section 19 of the bill be struck out and the following substituted:

"Commencement

"19. This act comes into force on a day to be named by proclamation of the Lieutenant Governor as a royal commission has carried out a full public consultation into the workers' compensation system and submitted its final report."

*Interruption.*

**The Chair:** Excuse me, Mr Christopherson. Madam, please, it's very difficult to hear in this room. These have to be read out carefully. We have to be able to hear them for Hansard. Kindly do not speak in the room when others are speaking.

*Interruption.*

**The Chair:** Madam, I will have to ask you to leave if this continues. Please, Mr Christopherson, go forward.

*Interruption.*

**The Chair:** Order, please. Mr Christopherson has the floor.

**Mr Christopherson:** I would point out that after we made our request of legal counsel for this change, I'm not sure that "as" is the correct word. I think that should be either "not before" —

*Interruption.*

**Mr Christopherson:** We didn't draft it.

**Mr R. Gary Stewart (Peterborough):** When we got it, this was —

**Mr Christopherson:** We didn't draft it. Do you want to see my original submission? I believe that they should have put "after a royal commission has carried out a full public consultation of the workers' compensation system and submitted its final report." I have my draft notes, the notes that were submitted to legal counsel of the Leg Assembly. That's what that should be. It doesn't make sense the way it is.

**The Chair:** One moment. Colleagues, just so you know, because of the time allocation motion there cannot be amendments to amendments. However, in the situation where it appears that it is a clerical error, we can accept the change if it is done by unanimous consent and the legislative counsel believes it is a clerical error.

**Mr Christopherson:** I'd probably be a lot more worried about it if I thought it had any chance of surviving. None the less, if we can make the record straight, I'll take it.

**The Chair:** All right.

*Interjections.*

**The Chair:** There is unanimous consent then for that —

**Mr Maves:** Madam Chair, could I ask a question about this?

**The Chair:** Yes, certainly.

**Mr Maves:** So then the ruling from yourself is that amendments — even for instance often in clause-by-clause analysis we talk about friendly amendments and so on — are out of order. This amendment is in order because it's a clerical error?

**The Chair:** Yes, friendly amendments would be out of order. This is in order because legislative counsel is acknowledging that this is a clerical error through legislative counsel.

**Mr Maves:** Okay.

**Mr Christopherson:** We're talking about a drafting error. It's like an input error. It's not even that they drafted it wrong, because if you read it, it doesn't work with that word.

**Mr Maves:** I just want to be clear on how that would proceed. Thank you.

1730

**The Chair:** We'll be very clear on whether amendments are allowed. That change will be noted in Hansard, Mr Christopherson.

**Mr Christopherson:** I'd like to speak to it.

**The Chair:** Speak to it, please.

**Mr Christopherson:** I want to point out that what we're suggesting with this motion is that the government recognize that they were wrong in killing the royal commission. We, like every other government, have acknowledged that the system wasn't perfect. This government continues to use as their justification for killing things and making them worse for the people they're trying to help that because it wasn't perfect, this was necessary, which is just a lot of garbage. There's a world of difference between changing something and

making it better and changing something and making it worse, but just changing it is not in and of itself a positive thing, yet you will continuously say that.

The reality is that more work needed to be done beyond what we were able to do. The royal commission was struck for that very reason. The royal commission was public, it was transparent, it was most of the way through its work but not completed. I don't believe you had any justification or any right in killing that royal commission and handing that work off to Cam Jackson and then he disappeared with it and held his private, secret meetings with God knows whom. We never did see a list in its totality of whom he met with or what they said to them, more importantly. That was the first act that you did.

The second thing is, it talks about full public consultation. As every one of you knows, there's not an injured worker in this province who accepts that your measly six days on the road constituted any kind of full public consultation, absolutely none, and the Kingston resolution that the injured workers passed speaks more to the kind of consultation that should have happened. If you admit you were wrong, pull back on 99, reconstitute the royal commission to do their work in public transparently, and only when that job is finished and after you've had full public consultation, only then, in our opinion, will you have the moral right. You may have the legal one but then you'd have the moral right to implement changes.

You have no moral right to make these kinds of draconian changes that affect injured workers and their quality of life with only six days of consultations when we had hundreds and thousands of people who still had something to say. This is the last chance you're going to have to do the right thing, and I would urge you to reflect on everything you've heard and realize that you have no right to ram 99 through. The people deserve to be heard.

**The Chair:** Further questions or comments? Seeing none, I put the question. Shall the amendment carry?

**Mr Maves:** It is our belief there's been quite a bit of public consultation around the workers' compensation system for some time. It's an area that all three past governments have made changes to. The previous government made changes to the system prior to a royal commission, so if it was morally right for them to do it before a royal commission, I don't understand Mr Christopherson's contention that all of a sudden it's morally wrong for us to make changes before a royal commission —

*Interruption.*

**The Chair:** Order, please.

**Mr Maves:** Mr Jackson did a study on the system. He talked to over 150 workers and received over 200 submissions. He issued a paper on that. We issued the bill in November last year. We had four days of debate in the House. We had seven cities that we visited and we feel there was quite a bit of consultation. The ministry also did some of its own consultations in-house. We feel that quite a bit of consultation has gone into this and that's why I would recommend to vote against this amendment.

**Mr O'Toole:** I just want to respond to the comments of the amount of consultation and the need for reform. We

heard from one of the participants in the public process, Ellen Fegan, and I'm just going to read directly from her document dated August 12.

"The case for reform is undeniable. The WCB's unfunded liability has increased by 470% between 1983 and 1994.... Correspondingly, accident rates dropped 33%," — in that period — "while employer assessment rates rose 46%."

She goes on to state, and I think it's worth all of us listening to the need for reform, "One has only to look at the royal commission reports of 1950 issued by Justice Roach and of 1967 by Justice McGillivray."

I'll summarize briefly, if I may, Madam Chair, "It is interesting to note that Justice McGillivray reiterated in his royal commission report that Justice Roach's comments were still valid" today. Bills 101, 162 and 165 had only continued to distort a broken system.

So there's clearly input from a non-participant who was there in terms of just a person appearing without any other agenda saying that the system needed to be fixed. There had been studies —

*Interruption.*

**The Chair:** Order, please.

**Mr O'Toole:** I think this bill is badly needed. As much as we talk about public consultation, there has been a lot of public consultation.

**Mr Christopherson:** I told you the argument was going to come, and there it is: "There have to be changes; therefore we're justified in what we're doing." The fact that you're making horrible changes and making it worse for the most vulnerable in our province doesn't seem to come into it for you.

*Interruption.*

**The Chair:** Order.

**Mr Christopherson:** You're doing the same thing to our education system, to our health care system, to our social service system, to other labour legislation. Every time you stand up and say, "There's a problem; therefore we're going to kill it," you put the lie to the argument that you're making anything better, because that's not what you're doing with Bill 99.

Let me also say that it's interesting that Mr O'Toole doesn't think we need more consultation. I was standing beside him when he did a radio interview at the end of the Kingston hearings, and I couldn't believe I heard him say it, and he did — and you said it publicly, so I consider it proper to use it, public consumption. He said, "Yes, I wish we could have gone to Ottawa too." Yet every time I asked for unanimous consent to allow a motion that would extend these hearings, you were part of the gaggle that voted to shut that down. So you've got a lot of nerve.

*Interruption.*

**The Chair:** Order, please. Order. Ladies and gentlemen, This committee stands recessed for 10 minutes.

*The committee recessed from 1738 to 1749.*

**The Chair:** Colleagues, the standing committee is adjourned. We will reconvene at our next appointed date.

*The committee adjourned at 1750.*



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